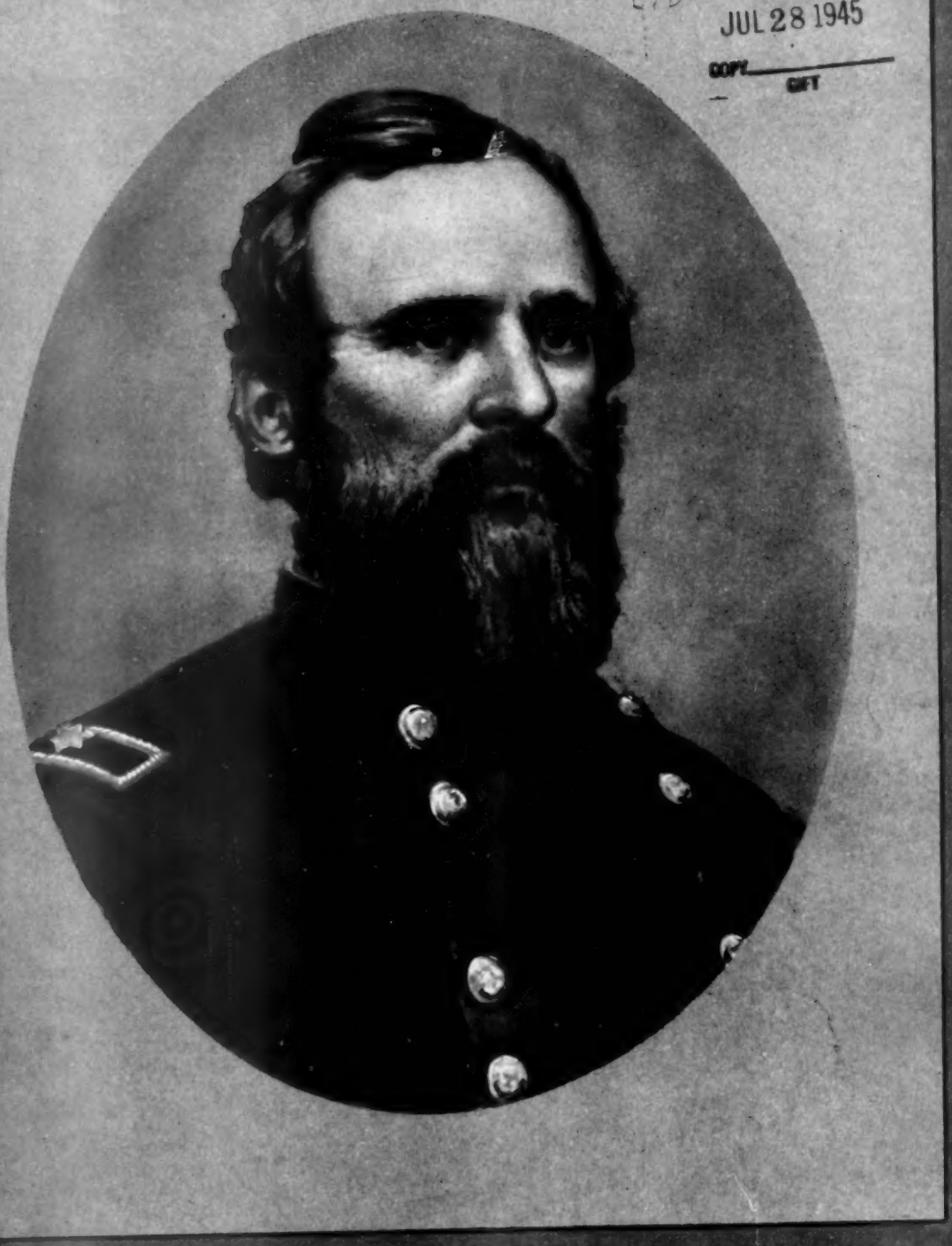

Rutherford B. Hayes

AMERICAN BAR ASSOCIATION JOVRNAL

August 1943

BONDS!

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There is . . . "a time to laugh" . . .

Ecclesiastes 3:4

A Traction Problem

Everything comes to him who waits
If he waits in a place that's meet.
But never wait for a downtown car
On the uptown side of the street.

Multiple Verdicts

A story is told of a lady jury that had been out for hours. The judge looked tired, the clerk yawned, and the lawyers slept.

And, then, quite unexpectedly, the jury announced it was ready to report, and the twelve ladies filed in.

"Have you agreed upon a verdict?" the judge demanded.

The forelady smiled. "We have agreed upon twelve verdicts, Your Honor," she told him in her flute-like voice.

"You are discharged," roared the judge.

Legislative Draftsmanship

A Kentucky statute provides:

"No female shall appear in a bathing suit on any highway within this state unless she be escorted by at least two peace officers; or unless she be armed with a club."

An amendment to this statute was proposed by a legislator, which is as follows:

"The provisions of this statute shall not apply to females weighing less than 90 pounds nor exceeding 200 pounds; nor shall it apply to female horses."

For the Code of Evidence

In Oklahoma a man was in court and also the ear which he was accused of biting off. It was held improper to ask a question as to his ability to bite off his own ear, because it called for a conclusion and was argumentative.

New Bill Collecting Technique

A doctor was called to the home of a family whom he had attended for several years. A fairly large account had resulted, and repeated bills had been ignored.

On this occasion it was the maid he had been called to see. He found her in bed, but a careful examination failed to reveal any signs of ill health. When the doctor queried, "What's the main idea?" she asked him to close the door, and then explained: "Well, Doc, I've been working here for six months, and have never had a cent of pay. I've decided I'm not getting out of this bed until they pay me every damned cent they owe me!"

And the doctor said: "I think you have something there. Move over!"

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IN THIS ISSUE

Our Cover—Rutherford B. Hayes, nineteenth President of the United States, lawyer and soldier, is the subject of our cover this month. George R. Farnum of Boston, contributes another of his interesting biographical sketches, which will be found on page 443. Portrait from L. C. Handy Studios, Washington, D. C.

Two Heroes of the Law—Associate Justice Wiley B. Rutledge, of the Supreme Court of the United States, has granted permission for our publication of his address before the Chicago Bar Association at its recent annual meeting. The Chicago Bar Association gives courteous consent to the contemporaneous publication of that address in the AMERICAN BAR ASSOCIATION JOURNAL and the Chicago Bar Record.

Post-War Planning and the Organized Bar—Post-war planning is engaging the consideration of the government and the people of the United States. Lawyers cannot escape the duty of participating in those plans, but a separate question arises as to in what portion of that enormous field the organized bar can render most effective service. That subject will be one of those likely to be considered at the annual meeting in Chicago August 23-26. In advance of that meeting the JOURNAL presents a symposium consisting of short contributions by eight of our members chosen from widely separate parts of the United States and representing the independent utterances of variant views.

National Patents Planning Commission—Loyd H. Sutton, of the District of Columbia Bar, professor of patent law at George Washington University, concisely sets forth the findings of this important Commission in answer to the accusations which have been made against the patent system.

English Law in Wartime — George Edinger, of England, a legal journalist for the British Council, tells us how courts in England perform their duties during a crisis, how the rights of individuals are safeguarded, and what part is played by the bar in maintaining freedom and justice, the purposes for which the war effort is put forth. The profession, he says, has maintained three essentials: its purpose, its freedom and its continuity.

Review of Supreme Court Decisions—Since our last issue went to press, twenty-five opinions were handed down by the Supreme Court of the United States. Eleven opinions are reviewed in this number.

The *Schneiderman* case involved proceedings to cancel citizenship of an active member of a communistic organization. The Supreme Court reversed the district court and the court of appeals, holding that the proof did not satisfy the burden cast upon the government to set aside and annul the prior judgment of the district court granting the certificate of citizenship.

In the Japanese curfew case it was held that in time of war and of special danger, the government was justified in enforcing a curfew law not only against Japanese alien enemies, but also against American citizens of Japanese descent.

Then follow three Jehovah's Witnesses cases. One opinion declares that the Mississippi statute prohibiting subversive utterances is involved as to the utterances of the members of that religious sect. There was strong dissent. The second decided that the state had no power to compel pupils to salute the flag as a part of school ceremonies. The third opinion declares that the distribution of Jehovah's Witnesses literature cannot be taxed.

Tot v. *U. S.* and *U. S.* v. *Delia* deal with an important definition of presumptions and the degree to which the federal government might make the mere possession of firearms and ammunition by one who had been convicted of a crime of violence a conclusive presumption that the firearms and ammunition were obtained in interstate commerce.

The celebrated *Johnson* case, conspiracy to evade federal income taxes by fraud and conspiracy, and the *Buchalter* case, in which the judgment of the court of appeals of New York in a murder case was reversed, are both important decisions—one in the field of taxation and both in the field of criminal law.

ANNUAL TOPICAL INDEX

In Volume 62 of the American Bar Association Reports there was printed a complete index of subjects dealt with in the first 23 volumes of the JOURNAL. In Volume 65 of the Reports and subsequent volumes, topical indexes of Volume XXIV of the JOURNAL and of each succeeding volume, have been printed. Reprints are available at $1 each of the topical index of the first 23 volumes.

CURRENT EVENTS

Program for War Workers

REFLECTING the cooperative functioning of the lawyers in the armed forces and the civilian members of the organized bar is the program for war workers, scheduled for the Sixty-Sixth Annual Meeting of the Association. This program is virtually a direct outcome of the Legal Assistance Office propect jointly sponsored by the Association with the War Department and with the Navy Department.

The first portion of the program will be devoted to a meeting on the afternoon of Tuesday, August 24, under the auspices of the Section of Bar Activities collaborating with the Association's Committee on Coordination and Direction of War Effort.

At this meeting it is expected that addresses will be made by Major General Myron C. Cramer, The Judge Advocate General of the United States Army, and Rear Admiral W. B. Woodson, The Judge Advocate General of the United States Navy, outlining the purposes of the legal assistance office plans which have been worked out with each of the Services by the American Bar Association. Colonel Julien C. Hyer, Judge Advocate General of the Eighth Service Command, will explain the functioning methods of legal assistance offices established in that Command.

These addresses will be followed by a discussion of methods and techniques, to be led by a panel made up of Major Milton J. Blake, Chief, Legal Assistance Branch, Judge Advocate General's Department, United States Army; Lieutenant Commander E. I. Snyder, exercising a dual function for the United States Navy; Mr. Tappan Gregory, Chairman of the American Bar Association's Committee on War Work, Mr. Harold H. Bredell, Executive Assistant of the Association's Committee on Coordination and Direction of War Effort, and Mr. Leonard J. Emmerglick, Administrative Assistant of the Committee on Coordination and Direction of War Effort.

It is expected that a large number of legal assistance officers will attend. The session should afford an opportunity to all interested in this work to exchange experiences with the members of the panel and each other, and to learn how to advance their legal assistance activities. Further details will be announced in the program for the meeting.

On Tuesday evening, August 24, at 8:30, the second session of the Assembly will hear and see the story of "The Lawyer in the Army." Honorable Robert P. Patterson, The Under-Secretary of War, will speak. Brigadier General Cornelius W. Wickersham, Commandant of the School of Military Government, at Charlottesville, Virginia, will discuss the purposes and functioning of that institution, unique in American military history.

The role of the soldier-lawyer in the administration of military justice will be presented in a motion picture, prepared by the United States Signal Corps. This film, produced with the best Hollywood techniques and with military accuracy, not only depicts an interesting court-martial trial, but carries cut-back explanations of the procedure. The film has already won the high praise of many lawyer observers.

Fourth Judicial Circuit Conference

WITH Lieutenant Commander James J. Robinson, Committee Reporter, on the bridge, the preliminary draft of the new Federal Rules of Criminal Procedure slid down the ways at Asheville, North Carolina, on June 11, and embarked on its first shakedown cruise. The occasion was the Thirteenth Annual Judicial Conference of the Fourth Circuit which took place on June 10, 11 and 12, beginning just eighteen days after the Supreme Court of the United States had given its committee, appointed to assist in the preparation of the rules, permission to circulate them to the bench and bar for comment.

Principal interest centered around the alibi notice rule at which point counsel for the defense stepped in and buffeted the good ship with some heavy verbal blasts. If a defendant cannot be required to testify (it was said) and is presumed to be innocent until the contrary is proved beyond a reasonable doubt, how can he be required to "give away" his defense in advance if that defense is an alibi, it was asked.

Reporter Robinson's defense of the rule was that no defendant who has an alibi will be harmed by revealing it in advance unless it is not capable of standing up under investigation and close scrutiny. Fourteen states now have the rule in one form or another and it is generally reported to be working well. A vote by about a two to one majority sustained the committee's recommendation that an alibi notice rule be provided. An interesting rule recommended by the committee and now in force in the Fourth and several other Circuits, which would require such parts of the record as appellant and appellee wish to call to the attention of the appellate court to be attached as appendices to their briefs, was lauded by Circuit Court Clerk Claude M. Dean as making both for economy and increased efficiency.

In the discussion of other rules some changes were suggested. On the whole, however, there was general approval of the committee's draft and the improvements recommended can be made without even putting the ship in dry dock. If no

greater flaws are discovered in other cruises on the Sea of Discussion, the shipbuilders are entitled to much credit for the craft which they have designed and built.

Other sessions of the Conference were equally valuable and enjoyable. Judge John J. Parker, Judge Morris A. Soper and Judge Armistead M. Dobie, all members of the Circuit Court of Appeals, presided at successive sessions.

At the second session Judge Ben Moore of Charleston, West Virginia, delivered an eloquent tribute to the late Judge George W. McClintic, widely known and beloved in the Circuit, and at the last session Colonel Kenneth Royall, deputy fiscal director of the War Department gave an interesting and informative talk about the scope and the nature of the legal activities of the Department. Colonel Royall was appointed to represent the German saboteurs in their trial by a special military court and in their appeal to the Supreme Court.

At the Conference banquet, Judge Parker presided as toastmaster and responses were made by Judge William T. Lovins of the West Virginia Supreme Court, United States Attorney Doyle, Solicitor General Fahy, George Maurice Morris, president of the American Bar Association, The Assistant to the Attorney General James H. Rowe, Jr., and Circuit Judge Elliott Northcott.

Civilian Defense Manual

AS announced in each issue of the JOURNAL since February, the Association has a supply of the Civilian Defense Manuals on hand. These copies of the Manual have thus far been reserved for distribution, free, to all members of the Association who apply for them at 15c per copy to cover mailing and handling cost. Such distribution will continue as long as the supply lasts, and members who have not already sent for their copies are urged to do so now.

After September 15, however, and until the end of the year, copies of the Manual remaining on hand will be distributed to officials and committees of state and local associations, and to Defense Council members and others in whose hands it will most effectively promote the war effort.

Notice by the Board of Elections

AS a result of the ballots cast by members of the Association in Hawaii, the Board of Elections announces that Benjamin L. Marx, Honolulu, has been elected State Delegate for that jurisdiction for the vacancy in the term which will expire at the adjournment of the 1944 Annual Meeting.

This notice did not appear with the story published in the June JOURNAL, announcing other State Delegates recently elected, because the polls were not closed for receipt of ballots from Hawaii until June 25, 1943.

EDWARD T. FAIRCHILD,
Chairman, Board of Elections.

Justice Jackson Speaks of Brandeis

AN unrecorded item of American judicial history was strikingly attested by Mr. Justice Robert H. Jackson, of the Supreme Court of the United States, in an address which he delivered before the dinner of the Louis D. Brandeis Colony of American Zionists, in New York City on June 23. Concerning the letter in which Mr. Justice Brandeis joined with Chief Justice Hughes in opposing the plan of the President to reorganize and enlarge the Supreme Court, Mr. Justice Jackson declared that it "did more than any one thing to turn the tide of the Court" struggle. The speaker also attested that, as to the Supreme Court, "Brandeis valued its independence of decisions even more than rightness of decision."

It will be remembered that during that historic contest in 1937, the present Associate Justice was Assistant Attorney General of the United States and closely in the confidence of the President. "The message to Congress in which President Roosevelt proposed to reorganize the Court brought on some of the most critical moments of its long and not always tranquil history," said Mr. Justice Jackson, as quoted in the New York *Times* for June 24. "Brandeis had protested some, though not all, of the decisions that had aggrieved the President and many others. In general the attack in the Court fight was against decisions that he had opposed in the Court.

"But while he was always ready to struggle within the Court, he would have no hands laid upon the institution from the outside. It mattered not that the outside hands would in the main uphold his views and would rebuke those with whom he had long and often disagreed. Brandeis valued its independence of decisions even more than rightness of decision. He joined with Chief Justice Hughes in a letter to Senator Wheeler which did more than any one thing to turn the tide of the Court struggle.

"I mention this because it revealed the man. I suppose perhaps 85 per cent of those who followed and revered him were in the camp of the President. I think 95 per cent of those who disliked or scorned him were in the opposition.

"But Brandeis did not determine his principle by counting heads. He simply thought his friends were wrong and his foes for once were right, and that was an end of the matter for him.

"Brandeis was labeled as a 'liberal,' and labels are tyrannical things. Because Brandeis had been a liberal in politics, many expected him as a judge to sustain all that was done in the name of liberalism. Those reckoned without knowledge of his high concept of his judicial office. He feared and distrusted large,

(Continued on page 474)

TWO HEROES OF THE LAW

By HONORABLE WILEY B. RUTLEDGE

Associate Justice, Supreme Court of the United States

I AM very glad to return to Chicago, and especially for a meeting of the Chicago Bar Association. Just thirty years ago in September, I first glimpsed your urban empire. The most vivid impression upon eyes familiar with southern hills and hamlets came from the unbounded sea of lights through which at dusk the train rolled into the city. Since then I have returned many times. Much in your landscape has become familiar. Many friends have made here their homes. In a sense, you are the law school capital of the nation. For not only have you preeminent institutions of legal learning, but Chicago is the Mecca of legal educators when war does not forbid their annual pilgrimage. Likewise your city is the capital of the bar of the country. For here the largest and one of the greatest of our professional organizations has headquarters. Few lawyers or teachers of law therefore have escaped your influence in professional matters. I know something, too, of the high work your own association has done in promoting the cause of a better, which includes both a cleaner and a more efficient, administration of justice. I wish there were time for me to speak of it in detail, and to give due acknowledgment to men who have led in your various and particular efforts. But I can do no more now than speak in general approbation and mention one who lived and wrought greatly among you until just the other day.

No words of mine could add luster to the name of Wigmore. It will shine in the legal firmament for ages after most of us have been forgotten. Seldom are so many qualities of genius combined in one person. More rarely do they flower as they did in him.

It was not my privilege to know Dean Wigmore intimately. He was of another generation, already a deity in the household of law when I entered. My opportunities for knowing him came chiefly through casual associations at professional meetings, most often of the National Conference of Commissioners on Uniform State Laws. His active part in the work of that body for the greater part of its life typified the versatility and depth of his omnivorous mind and his inexhaustible energy.

Some men become great as lawyers, a few as judges, others are remembered as great teachers, and a few as great deans, architects of legal education. But the fingers of one hand, or less, will count men who have become preeminent both in scholarship and in law school administration. For most who have the burden of the dean's routine and his responsibility for some part in building policy, the necessary choice is between these things and more than occasional excursions into scholarship. With Wigmore there was no such compulsion. His vision, leadership and ability to get things done built here one of the nation's great centers of legal thought and training. Few educators leave their impression upon an institution as he did upon Northwestern University's school of law. What he did in creating it to the time its direction was handed to his worthy successor was a more stately mansion for his soul than most men erect in a lifetime of single effort. But his hand was equal to many tasks. Thousands of students, from all over the nation, received the majestic impression of his mind at first hand. And other tens of thousands, most of whom never were privileged to see him, learn from his classic treatise upon the Law of Evidence, as the lawyers and judges of another day absorbed the wisdom of a Coke and a Blackstone. I am sure no one will call it invidious comparison if I state the considered judgment that this work stands preeminent among the greatest produced by American legal scholarship. It is at once a ready and precise working tool, a history of the great ideas in the field of proof, a philosophical critique of legal institutions, and a guide to their more efficient and just administration. Widely as one may differ from some of his vigorously stated opinions, no other work now current so excellently combines practical utility and authoritative discussion with the scholar's historical perspective and critical faculty.

But Dean Wigmore lived a lifetime, happily a long one, among you. You knew him much better than I. My purpose in referring to him has not been to inform you. It is two-fold. First, and simply, it is fitting, even in days when sheer force has displaced law as the ruling power over so much of the earth's surface, for lawyers everywhere to bow in memory of one who wrought long, valiantly and so fruitfully to establish justice as the framework of man's habitation. And, in the second place, by recalling the prime object and end of his life, we may find guidance and courage to follow for the vast legal work ahead. In this he can have the part he would have played only if we who remain put shoulder to the burden his own let down and close ranks to fill the vacancy left when he fell.

I also think of another lately gone. But a few years ago he walked the campus at Iowa in the vigor of perfect youth. His feet were swift, his hands strong and sure, his eye clear and far-sighted, his mind quick like

the running of lightning from cloud to earth. Few men have had the grace and strength of body he possessed. He used it with miraculous effect upon the field of sport to the glory of his school and the pride of his state. Nile Kinnick will be remembered as long as there is an Iowa.

But his prowess was not merely of physical manhood, flowered in American youth. Acclaimed hero of the gridiron from coast to coast, he received his honors with no visible sense of prideful spirit or haughty elation. His modesty was equal to his courage and strength. In the limelight of glory he remained the same as when his name was merely that of another American boy. Early he learned—rather he innately knew—how to meet and to conquer success.

Kinnick's mind was equal to his body and his spirit in its quality. I am not one who admires the accumulation of academic honors for their own sake. Credits, grades and degrees have only the interest of rusty medals in a museum, if the only achievement in attaining them is the attainment. No campus character is quite so pitiful as the one who becomes engrossed in seeking the old and the abstruse, so that he loses sight of the new, the obvious and the simple things. For at the end of the past are the present and the future. And beyond the most intricate technique lie the simplest, and therefore the greatest things. Nile was the rare great athlete who also "made" Phi Beta Kappa. But he was no pedant or antiquarian. For him learning was a game, to be played as football was, for the zest of life he found in it.

He aspired to our profession and began the study of law. His first year was outstanding, as full of promise as anything he had done before. On entering law school he put away collegiate things, except to use his athletic talent in coaching to earn his way through school. He knew how to step aside from the spotlight, get down from the pedestal, and plunge into the hard, long grind of Pleading, Property, Contracts and Torts.

Then, just as he was well started, came his country's call to service. Typically he selected the swiftest, most dangerous spot. And with his training hardly more than finished, he kept bravely his rendezvous with destiny. If death had to come, it was fitting he should go from the sky.

I have no doubt Kinnick would have written his name high in the law. There is no calculating what he might have done in and for the profession, or therefore what it and the nation have lost by his sacrifice. Who knows whether another Wigmore has not been cut off at the threshold of high career? He too was versatile, alive. He might have been the great scholar and teacher, the preeminent advocate, the judicial statesman. But all this he gave that institutions Wigmore worked so long to perfect might survive and have being for generations to come.

Wigmore left us with the work of a master done. Kinnick, perhaps his equal in potential capacity, was cut off at the dawn of manhood from the chance to begin.

So I give you these two heroes of the law, men who lived and gave the best of their superb talents to their country and through it to the preservation and perfection of law and legal institutions throughout the earth. Each laid upon the altar of freedom, in his own way and as time gave opportunity, the whole store of his ability and energy. One mellowed with the wisdom of years, the other eager with youth's zeal for high adventure, perhaps together they listen tonight as we acknowledge what we owe these men of law.

But neither would want only a personal tribute. Each would wish his life and work to count for some advancement toward their common goal. Wigmore lived and worked that men like Kinnick might follow in his steps. Kinnick died that others might have what he was denied. Neither was a man of narrow vision. What each wanted for himself, he wanted also for others. And this brings what I have to say to its concluding thought.

If you have not reread it lately, take down Lowell's noble poem and read again the majestic lines of "The Present Crisis." It might well have been written yesterday.

"Backward look across the ages and
the beacon-moments see,
That, like peaks of some sunk
continent, jut through Oblivion's sea;
Not an ear in court or market
for the low foreboding cry
Of those Crises, God's stern winnowers,
from whose feet earth's chaff must fly;
Never shows the choice momentous
till the judgment hath passed by.

"Once to every man and nation
comes the moment to decide . . . .

"New occasions teach new duties;
Time makes ancient good uncouth;
They must upward still, and onward.
Who would keep abreast of Truth;
"Lo, before us gleam her camp-fires! we
ourselves must pilgrims be,
Launch our Mayflower, and steer
boldly through the desperate winter sea,
Nor attempt the Future's portal
with the Past's blood-rusted key."

We stand now at one of history's beacon-moments, when God's stern winnower will sever out the chaff for, it may be, a thousand years. None doubts now our victory at arms, though none yet can foretell the hour. Too long we stood looking backward across the ages, with not an ear for the low foreboding cry of the crisis then impending. Almost the choice momentous lapsed unmade. That danger we have passed. The decision was thrust upon us and, thank God, it was not too late.

But another looms ahead. Wigmore did not work for eighty years in perfection of the law that every score should put it aside, perhaps to destroy his creation. Kinnick did not die that other Kinnicks should meet his fate two decades hence. We face now the choice, for

perhaps five hundred years, whether law or force shall rule the world. We now know we cannot have law at home and anarchy abroad. Twice this century we have followed that mirage. Twice we have left the house of law for the field of arms. That road, if we travel again, we may not survive.

I do not suggest a plan. I only point to the necessity. But this at least must be done. Some structure of law, capable of keeping the peace among nations as among men, must be erected. Otherwise the decision whether we shall have law or global war again will be made by whatever insane power may take the place of those we now subdue. And it is we who will decide the issue by what we do now and henceforth until peace is made. As men of law, our share in the choice can be large. It can be decisive. For, when the soldier's work is done, to our hands again will come the torch to hold aloft for a decade or half a millenium, as we may choose.

That is the choice momentous. Pray God, we may have an ear to hear, that the judgment may not pass by.

PROFESSOR G. H. ROBINSON'S LETTER TO THE NEW YORK TIMES

AN animated discussion took place, late in June, in the "Letters to the Editors" columns of the New York *Times*, between Senator Langer of North Dakota and General Counsel Thomas Emerson of the OPA, as to the number of salaried lawyers on the staff of the OPA. Senator Langer maintained that the number exceeded 2,700; Counsel Emerson said that the number was about 2,500. Senator Langer countered that price administration in England requires only ten lawyers; Counsel Emerson explained that in England many lawyers are employed on a part-time or fee basis.

This led Professor G. H. Robinson, of Cornell University, President-elect of the American Association of Law Schools, to contribute to the discussion the suggestion that "a return to the more independent footing of the profession" would be highly advisable in the United States. Professor Robinson's letter was as follows:

"To the Editor of the New York Times:

"In the exchanges between Senator Langer and Office of Price Administration Attorney Emerson on how many lawyers the OPA has as against how few its opposite number in England employs, I am struck by Mr. Emerson's explanation that England uses 'a very large number . . . upon a part-time or fee basis.'

"It seems to me that we should do just that here. It would be a return to the more independent footing of the profession. For years the lawyer has been in process of being 'kept' by businesses big enough to maintain a salaried legal department. Any outsider who deals with these 'wage slaves' knows how little attention his viewpoint, or any detached viewpoint, gets from them. He feels offense at the system. But our governments—not merely federal but state and municipal as well—have developed it beyond anything heretofore known. Is the 'kept' government lawyer less fanatical in behalf of his employer; or is he any less a slave to the hand that signs his pay check? How detached is his viewpoint?

"The cure would be to have merely a skeleton force in the main office, as Mr. Emerson says is the case in England, and have it send out cases on a fee basis. If this work were spread among the lawyers on their professional competency rather than on their ideologies or politics we should not find a Congressman saying that government was the meanest debtor and the meanest creditor, nor would we find government attorneys seeking to hold a bidder to his offer of $2,900 when other bids at $10,000 and $12,000 showed, as the 'low' man had at once reported, that his figure was a clerical error."

In the United States, the matter has more complicated aspects than Professor Robinson stated. These angles were candidly canvassed between the OPA and the American Bar Association's Committee on Civilian Defense, and were reported to the House of Delegates last March. In such phases of the work of the OPA as are quasi-judicial, the Association would gladly enlist and make available to the OPA the services of qualified lawyers. Other aspects of the work are inquisitorial, controversial, at times political. Tasks of prosecution and enforcement have presented issues on which lawyers, along with other citizens, have divided and felt deeply. The Amercan Bar Association has refrained from proferring the services of its members for such tasks. The OPA could, no doubt, obtain the services of many independent lawyers on a part-time or fee basis, as Professor Robinson suggested, instead of relying so largely on full-time staffs. Further developments will be awaited with interest, by the profession and the public.

POST-WAR PLANNING AND THE ORGANIZED BAR

Contributors to this symposium are former Senator George Wharton Pepper, of Philadelphia; Honorable Forrest C. Donnell, Governor of Missouri; Cody Fowler, State Delegate from Florida to the House of Delegates; William Logan Martin, Birmingham, Alabama, nominee for the Board of Governors; Benjamin Wham, Chicago, Illinois State Bar Association Delegate; Honorable Frederic M. Miller, Chief Justice of the Supreme Court of Iowa; Joseph W. Planck, Delegate from the State Bar of Michigan, and Loyd Wright, Delegate from the State Bar of California.

POST-WAR planning is essentially a problem in corporate reorganization.

There are in the world some sixty different national groups, each with its proper self-consciousness and a sense of more or less inadequacy. Each corporate group has its own way of life, its own peculiar economic needs and its own standards of personal and corporate conduct. Each is willing to subordinate some of its preferences in these and other respects if by so doing it can secure protection against the dangers which it most dreads. These dangers may include national insolvency, suffocation through overcrowding, pestilence, famine and the violence of covetous enemies. Some national groups experience all these fears. Some are haunted by several of them. All share the last—the fear of war.

The resulting problem of corporate association is therefore three-fold: first, to ascertain what each group really needs and to appraise its assets and liabilities; second, to decide in the light of the ascertained facts what form of international association will satisfy needs and make possible the necessary adjustment of interlocking rights and liabilities; and, third, to ascertain whether the indispensable parties to such an inclusive association are willing to pledge the contributions necessary to make it a going concern. If, when all relevant facts are known, the parties want consolidation and merger they can have it. If they want a partnership or will stand only for a loose federation, the appropriate articles can readily be drafted. But to try to force people into a preconceived form of association only to discover that they will have none of it is an attempt which no responsible lawyer ought to advocate.

As so often happens, it is the unpopular function of the lawyer to insist upon a rather prosaic factual approach to the problem in hand. He realizes that organization has myriad forms and that when the facts are known the appropriate corporate formula can readily be applied. He is also aware that the confident announcement of a particular paper plan without adequate consideration of the economic and psychological factors involved is nothing more than a pastime for dreamers. Such dreams have been the specialty of French statesmen whose symmetrical and clearly-worded constitutions have seldom outlasted a generation. To assume that the problem of international cooperation is simplified because geographical intercommunication has become easier is like asserting that Christian unity can be promoted by moving into the same apartment-house families with diverse religious convictions. A far more effective instrument of unity is a court of international justice. The bar should unite in urging the prompt codification of international law and the maintenance of a permanent court wholly independent of any central political organization and relieved of the controversial function of issuing "advisory opinions." Whether its judgments should have a more convincing sanction than a covenant to abide by the award will depend upon the amount of force, if any, available to whatever international association may be the outcome of planning. If force is available it could not be better employed.

GEORGE WHARTON PEPPER

THE present most urgent business is the winning of the war. It is, however, my opinion that (a) during the progress of the war our citizens should, without diminishing their war work, engage in formulation of plans for the period next following the conflict and (b) the lawyers of America can and will render valuable service in formulating those plans.

Among the objects to be attained by such plans are (1) prompt employment of millions of persons who will return from service of our country or will be thrown out of work by closing of war industries, (2) conversion, or reconversion, into producers of peacetime commodities, of many plants which will have been manufacturing war materials, (3) opportunity for completion of schooling, interrupted by the war, of youths who shall have returned from the service, (4) development of national economic policy upon taxation, money and international trade, (5) legislation upon labor, industry and agriculture, (6) provision for social security, (7) flood control, reclamation and conservation of natural resources and rehabilitation of blighted areas in municipalities, (8) internal improvements such as highways

and other public works and elimination of grade crossings, (9) development of aviation and (10) reestablishment of peaceful means for settlement of future international controversies.

Most of the post-war employment must be provided by private industry. The initiative and enterprise of our citizens will continue to be the predominant factors in industrial progress. Supplementary employment by governmental agencies will, however, doubtless be required.

In time of peace and time of war, lawyers have frequently been selected as directors and heads of great industrial and financial enterprises. The judgment, power of analysis and constructive thought of lawyers can be of value in the solution of many questions relating to the post-war period. Many lawyers will be qualified to work, in cooperation with persons engaged in commerce, finance and government, in determining the proper scope of post-war plans and in analyzing those plans to determine whether they are sound and practicable. Lawyers should be among those persons who will be engaged in study of prospective legislation which will in post-war times be needed and of peaceful means for settlement of international controversies.

Effective aid can be rendered by lawyers in planning for the post-war period by the work which committees of the American Bar Association may perform both separately and in conjunction with committees of commerical and other organizations and with public officials.

FORREST C. DONNELL

THE great majority of thinking Americans know that next to winning the war the most important thing is the post-war period and the future relationship between the United Nations. I believe that we as a people realize the necessity for a permanent international organization, certainly dominated during a long experimental stage by Russia, China, Great Britain and the United States; an organization that will prevent Germany and Japan, Italy need not be considered, from laying the foundations to once again plunge the world into war; that will create a world tribunal where the rights of nations and peoples may be tried and justice done; with a military force available to uphold its decisions. This organization must deal solely with international affairs and should not interfere with the internal problems of any nation. Unless this is true, such a tribunal will never come into existence, and if it does, will have a short life.

We have abundant reason to be suspicious of European and Asiatic diplomacy and most of us feel that we have been out-traded repeatedly by foreign diplomats. This time our representatives must temper their idealism with realism. Our most capable men must speak for us and they must be truly representative of all of our people and certainly of no party or faction, neither theorists nor reformers; they must be experienced realists and have the confidence of the nation.

When the fever of war has passed, we will once again be dominated by practical ideas. The world organization, such as will follow this war, if it is to be successful, will have many features of a partnership, and like all partnerships, to survive it must be mutual and give fair returns to all partners according to their contributions and services. If we are to be, as we certainly should be, an active partner in this organization, we must carry our full burden and responsibility, but on the other hand, with our experience following the last war still in our minds, we will not be willing to be the nation that must wield the laboring oar, endorse the checks, feed and rehabilitate the world without receiving in return our full share of benefits therefor. Our representatives must approach the peace table with a desire to serve the world, yes, but in so doing also to serve us. They must have in mind the same interest in the welfare of our nation and our people as the representatives of the other major nations concerned will have constantly before them the interest of their respective countries.

We must remember that our allies of today while they will be our friends after the war, will be keenly alive to their own interest, and if we do not protect ourselves we may find that we have been outwitted as before. If our people decide any post-war organization does not properly protect our interest, they will refuse to be a part of it, which would be a tragedy both to us and to the world. We must win the post-war as well as the war itself in order to attain complete victory.

CODY FOWLER

WE are fighting so that this nation may never again face the hardships and losses and griefs of war. We now know that peace when secured can be maintained only by force. So long as any people is free to assault its neighbors, so long will the peace of the world be disturbed.

A force sufficient to put down any threat by any people should be maintained permanently by the nations which want peace. If any other nation threatens the peace of the world it must be promptly attacked by this common force and its leadership destroyed. There will always be bandits, but no other Hitler or Tojo should be permitted to raise his head.

The people of the British nation and the United States will follow a leadership which has peace, even with force, as its object. But if the problem provides an excuse to engage in a world WPA, or to appear on the world stage as Lord Bountiful, success will be difficult. Our people are not willing to send to Liberia shiploads of pork garnished with bills of rights. Liberia may have no appetite for a bill of rights. If the Allied Nations enforce and maintain a permanent peace the weaker nations should shoulder their own burden of "freedom from fear and want." Human wants are inexhaustible.

The questions of a freer trade, the wider international exchange of goods and services, the control of raw materials, the possibility that the victorious nations themselves may be bankrupt at the end of the war, the punishments that must be meted out to guilty leaders, the permanent policing of guilty nations, the extent to which they shall be permitted to carry out internal reform if they are capable of doing so and the commercial air service and police force they shall be permitted to keep; the rehabilitation of pillaged countries, the provisional governments to be set up within liberated territory, the return of their expatriated people, the expatriation of the Japanese from the United States, the disposition of ships and munitions of war, the reparations to be imposed on our enemies, and the boundaries of a new Germany and Japan and of other countries—these present stupendous problems. But they can be solved and peace can be attained if the character of the nations seeking to solve them and to compel peace is such as to deserve the respect and confidence of each other.

What makes national character? The traits that make individual character, for a nation is a collection of individuals. Washington had character, as did Lincoln, Lee and Cleveland. Character implies truth, honesty, unselfishness, frankness, humility, courage. There are in public life men who have these traits. But there should be more—men who express their honest views irrespective of the result on their political future; men who for political gain do not array class against class and race against race; men who listen to the voice of their country and who are not disturbed by the blare of powerful political groups; men in whom the institutions of our government are deeply ingrained, who do not view them as something to toy with, who do not through pretext and indirection seek to change them.

Such men are needed, not only now but permanently, if permanent peace is to prevail.

WM. LOGAN MARTIN

POST-WAR plans should be debated and determined before the war ends for two reasons: much discussion will be necessary before an agreement can be reached; and an agreement on proper plans will raise the morale of our Allies and our own people and will cause our enemies to lose faith in their governments.

Such plans should include domestic as well as international issues.

Domestic Issues. Since we are fighting this war for freedom we should plan now in order to preserve freedom in this country. This should include freedom from want but this can best be gained through fostering private initiative and industry: government controls must be lifted as rapidly as feasible; private enterprise must take over the business operations of the government; tax laws must be revised so as to encourage new business ventures, and the national debt must be systematically reduced.

International Issues. Similarly, we must plan for adequate cooperation with other nations, primarily to prevent another war but also to encourage the development of backward groups and races and a free exchange of goods and ideas. Ample justification exists in an enlightened self-interest as well as the motive of service.

A world government similar to that created by our federal constitution is most likely to gain these objectives. It has the power over states and individuals necessary to enforce its orders yet is responsive to the will of the people through their elected representatives. Other forms of voluntary cooperation lack the cohesion necessary to withstand the whims of temporary majorities and to overcome the lethargy which accompanies peace.

This was made clear by the failure of the League of Nations to function at crucial moments: Japan was permitted to go into Manchuria, Italy into Ethiopia, Germany and Italy into Spain, and Germany into the Ruhr. The refusal of the Covenant Signatories to take action with regard to these minor incidents gave the green light to the Axis nations.

The principal obstacle will be the hesitancy of nations, including ours, to renounce certain national ambitions and advantages and to forego separate control of international subjects such as the power to raise and support armies, the power to establish trade barriers and the power over rates of exchange and international currencies. Yet, without such renunciation and a sincere desire to cooperate to remove the causes of war and to preserve peace, any form of cooperative effort will serve only to delay World War III.

If, as now appears, an effective world government must evolve through slow growth, we should cooperate fully with other like-minded nations to attain the primary goal of lasting peace.

BENJAMIN WHAM

EVERY day the conviction grows stronger that we can and will win this war. But grave doubts still exist whether we can also win the peace. By this we mean, can we, will we demonstrate the necessary leadership to make the aftermath of the war the opportunity for a new international relationship whereby disputes between nations can be peacefully determined by law and order? Can we eliminate these periodic resorts to intrigue, treachery and force of arms?

It is self-evident that settlement of disputes according to law requires the existence of some legislative agency to crystallize the principles of international law that nations are to obey, a judicial agency to decide disputes in a peaceful manner, and an executive agency to enforce the laws and the decisions of the judiciary. There are many existing examples from which a pattern might

be formulated for these legislative, judicial and executive agencies. But their establishment alone does not solve the problem. Experience has demonstrated repeatedly that designing men might plot to seize the powers of such agencies and corrupt them for selfish purposes. The price of peace might thus become the chains of slavery.

Americans, as a people, are impulsive and emotional. We seldom do things in a small way. We go all out in what we do. Our enthusiasm leads us often toward one extreme or another. But our system of checks and balances, our bill of rights, the separation of powers, the federal system of national and state governments have operated to restrain the exercise of the powers of government within the limits of justice and moderation. We chafe at such restraints, cry out that democracy is cumbersome and inefficient. Yet the restraints we complain of are the things that have kept us free.

In post-war planning, success or failure of the efforts that are certain to be made to curtail resort to war will depend on whether or not an analogous system of international bill of rights, separation of powers, checks and balances can be worked out so that the agencies, that are to preserve the peace, maintain law and order and settle controversies in a peaceful manner, will be compelled to exercise their powers at all times with such justice and moderation that each nation and its people may still be free. In such planning, may we always have before us the motto that flies on the flag of Iowa—"Our liberties we prize and our rights we will maintain."

FREDERIC M. MILLER

WE are on the threshold of another serious attempt to organize the world for peace. This is a social problem, the setting-up of an effective method of international social control.

So far, the wit of man has devised three, and only three, methods for controlling human conduct. These are religion, morals and law. In varying degrees, they combine to provide a livable standard of peace and order within the borders of the national states. As between nations, the technique of law has not been seriously tried. The time has come when the domain of law must be extended to world society. International law is not based upon a sanction. The problem is the creation of a sanction for the law of nations.

Any scheme of international machinery, to have a chance for success, must have the active participation of the United States. And the latter, in turn, depends upon the approval of a majority of the American electorate. Most of us now agree that something must be done. The danger is that we may refuse necessary concessions, especially with regard to sovereignty and the use of force.

Now it happens that John Citizen, the average layman, does not sufficiently understand law, its utility, its function and its method. To him it is something enacted in the statehouse and litigated in the courthouse and the less he has to do with it the better. There is a vast job of education to be done before the American people will understand the essentials in a plan for peace based on law.

John Citizen must actively appreciate that he lives, moves and has his being in an environment created and regulated by law, and that domestic peace is effectively organized by law. He must also learn that the law is a coercive order. The law does not reward. Unlike religion and morality, law compels human conduct by the application, when necessary, of a physical sanction here and now. As sovereign, the state stands ready to use force to discourage the use of force by individuals. The innate function of law is peace and order. Liberty and justice are ends which we seek to attain by means of law. But wherever law is effective there is peace.

Other persons, along with lawyers, can plot a scheme to avert war. But only lawyers can teach the understanding of law as a social technique, the science and the philosophy of positive law. Unless this is done, the peace may fail again.

Here is today's challenge to American lawyers, individually and collectively. History has given us no greater opportunity to improve somewhat man's rough road.

JOSEPH W. PLANCK

UNFORTUNATELY, in the minds of too many of our citizens the term "post-war planning" has a vague and indefinite meaning. All too many consider it an abstract question to be dealt with by some one else—or believe it concerns only our relations with foreign countries.

To my mind the most urgent need in this nation is the necessity of furnishing fearless and aggressive leadership relative to domestic issues. The most important of these is to determine whether the Bar will continue to sit idly by and see pressure groups influence our politicians to rush us along the road to a centralized, paternalistic form of government, or whether we believe the executive, legislative and judicial branches of the federal government should, as contemplated by the Constitution, be independent of the will of the other.

We must furnish leadership in all matters that relate to our system of free enterprise. By way of example, we should undertake immediately to formulate a program of post-war employment to encourage private industry to absorb the millions now in the Armed Forces. The alternative is direct employment by the federal government or some other contrived scheme abhorrent to our capitalistic economic structure.

We must accelerate and intensify our program for the improvement of the administration of justice; men returning from the Armed Forces will not countenance procedural delays. We must put an end to bureaucratic

courts completely unrelated to our judicial system and un-American in intent and design, else our whole judicial structure will collapse. We should undertake an educational program purposed to restore integrity in public office and to impress our electorate that it must become more industrious in the exercise of its right of suffrage if our democracy is to survive.

We should anticipate the clamor that will arise to let down the bars and permit easy access to our profession, and through educational programs educate the layman to the dangers of lessening the requirements for entrance into the profession.

We should recognize that we must help rehabilitate the nations ravaged by war. We must insist that such help as this nation is able to give be done from a practical and realistic standpoint and with a full sense of responsibility to our own people.

We should be first in advocating an international system of settling controversies with the related problems of policing and enforcing agreements between nations.

By training and experience no group is better qualified to furnish practical commonsense leadership in these and related questions than the American Bar. If the American Bar Association fails at the first opportunity to furnish this leadership, then it is my sincere opinion that it will have failed to justify its existence as an association undertaking to speak for all of the profession of this great nation.

LOYD WRIGHT

COMMISSION REFUTES WARTIME ACCUSATIONS

By LOYD H. SUTTON*

Of the District of Columbia Bar

THROUGHOUT the war period, there have been persistent accusations (1) that patents were hindering the war effort; (2) that the government did not have the right to use needed inventions and (3) that drastic legislation is required for correction of these evils. On December 12, 1941, directly after Pearl Harbor, President Roosevelt appointed the National Patent Planning Commission, which, after careful and prolonged study, reported June 18, 1943, that patents have not hindered the war effort. It would be difficult to improve upon the language of the Commission which is as follows:

> Existing laws permit the government of the United States and its contractors and subcontractors to manufacture and use any invention, patented or unpatented, regardless of the citizenship of the owner, upon the payment of reasonable compensation. These laws operate both in peace and in war. After consulting with the several government departments, including the War and the Navy, and affording them an opportunity for the presentation of evidence, the Commission is convinced that the existing laws are adequate to protect the government during the present national crisis.

The September 1942 issue of the AMERICAN BAR ASSOCIATION JOURNAL contained an extended article entitled "Patent Law in War and Peace", setting forth the specific statutes and Supreme Court decisions which clothe the government, its contractors and subcontractors with the right to manufacture and use any inventions in war or peace. The Commission reemphasizes this fact, and since its report was based upon an impartial study extending over a long period, in which government departments were given an opportunity for the presentation of evidence, it should dispose of this charge against the patent system.

Private Property Involved

Individuals, firms and corporations have made substantial investments in the development of new products based on inventions, have purchased machinery and erected plants for their manufacture, and expended large sums in advertising them to the public in order to secure adequate distribution. Practically every lawyer has one or more clients with a substantial investment in inventions or in machinery for producing new products protected by our patent system. The inventions and patents on them are property. Unwarranted attacks on one form of property lead to unwarranted attacks on other forms of property. Property rights are the keystone in the archway of free enterprise. Lawyers have always stood out as champions of human rights and free enterprise. They should be ready to do battle now to protect their clients against unwarranted attacks upon property rights and support the conclusion of the Commission that "The principle of recognizing a property right in intellectual creation is sound and should be continued as contemplated in the Constitution."

* Mr. Sutton is Professor of Patent Law at George Washington University and chairman of the sub-committee of the Patent Law Revision Committee of the Section of Patent, Trade-Mark and Copyright Law, to report on the recommendations of the National Patent Planning Commission.

The Commission found that the strongest industrial nations have the most effective patent systems and that the American system is the best in the world. The Commission also found that our patent system has contributed to the growth and greatness of our nation as follows:

> The American people and their government should recognize the fundamental rightness and fairness of protecting the creations of its inventors by the patent grant. The basic principles of the present system should be preserved. The system has contributed to the growth and greatness of our nation; it has:
>
> (1) Encouraged and rewarded inventiveness and creativeness, producing new products and processes which have placed the United States far ahead of other countries in the field of scientific and technological endeavor;
> (2) stimulated American inventors to originate a major portion of the important industrial and basic inventions of the past 150 years;
> (3) facilitated the rapid development and general application of new discoveries in the United States to an extent exceeding that of any country;
> (4) contributed to the achievement of the highest standard of living that any nation has ever enjoyed;
> (5) stimulated creation and development of products and processes necessary to arm the nation and to wage successful war;
> (6) contributed to the improvement of the public health and the public safety, and
> (7) operated to protect the individual and small business concerns during the formative period of a new enterprise.
>
> The strongest industrial nations have the most effective patent systems and, after a careful study, the Commission has reached the conclusion that the American system is the best in the world.

The Commission recommends that the basic principles of the system be preserved, but suggests a number of changes. It is interesting to note that several of these changes have been urged by the American Bar Association. One of the main changes recommended is the limitation of the term of a patent to seventeen years from the date of the grant or twenty years from the date of filing, whichever is the shorter. This change in the law was recommended by the House of Delegates at the Detroit meeting last August and a bill thereon is now pending before Congress.

Blow to Compulsory Licensing

Many opponents of the patent system have hit upon the idea of compulsory licensing, but the Commission is adverse to such a system. In effect, such licensing requires any patent owner to license his patent to anyone on request, and if he refuses, an individual or commission is empowered to grant the license and fix the price thereof. No prudent person could afford to invest large sums to bring forth patented developments if others could enter the field for a nominal royalty after he had developed the market and proved it to be profitable. The American Bar Association has opposed compulsory licensing and Congress has refused on a number of occasions to pass such laws despite pressure on it by proponents of them. The decision of the National Patents Planning Commission against it should settle the question for the present generation.

The Commission recommended legislation providing for relief from injunctions where the court should find patents essential to public health, national defense, *et cetera.*

Recommends Uniform Standard of Invention

The courts in recent years have raised the standard of invention to heights which will discourage the promotion of new business by venture capital and which will also discourage the production of new things by inventors. The Patent Office has maintained an attitude of encouragement of invention. The Commission recommends that Congress set a uniform standard of invention for the guidance of the Patent Office and the various courts.

Several other changes of a more technical nature were also recommended. The Commission's report refutes the unwarranted accusations made against our patent system and should serve as a factual base for constructive changes in our patent laws. The Commission is to be commended on its extended efforts and fearless report.

WE should help to so crystallize America's public opinion that, when the time comes for the peace to be written, the men who speak for us in high places can know without question the will of America's people, and knowing that will speak with the confidence of the power of a great Nation.

In forming that public sentiment lawyers trained in principles of government, the thing with which they deal, can and must furnish a sound public leadership to this country.

ROBERT G. SIMMONS,
Chief Justice of the Supreme Court of Nebraska

ENGLISH LAW IN WARTIME

By GEORGE EDINGER
Legal Journalist for the British Council

THE particular place the law holds in the British idea of the State makes the wartime work of the legal profession peculiarly conspicuous in war in English-speaking countries. Though both the United States of America and the countries that give allegiance to the English crown possess their separate legal systems, and the lawyers' profession is differently organized in every one of them, they have a common conception of that absolute "Rule of Law" that lies at the root of free government as they see it. Justice is not in these countries a department of State. There is no such thing as a Minister of Justice. Nor is there, generally, anything like a written code.

In the British Isles, judges are appointed by the king from among the body of practising lawyers and out of that portion called the barristers (some 3,500 altogether) who have to be experts in knowing the law and act as advocates in the higher courts. Thus the judge is so far from being a civil servant that the executive is bound to act in accordance with his decision. He can cancel any act of government, that in his view conflicts with the law of the land as enacted by parliament and as interpreted through the centuries by his predecessors on the bench.

The courts are public. The judge is bound to state the reasoning behind his decision, but otherwise he is subject only to the review of a superior court on appeal.

Once appointed he retains his post for life, or, as the phrase runs, "quamdiu se bene gesserit . . . ", for as long as he shall comport himself correctly. For theoretically the judges of the high court *can* be removed by the king at the request of a majority of both houses of Parliament, though in practice this has never happened..

So it is that in war, the courts, and consequently, to a lesser degree the legal profession, have been watchdogs for that way of life that the English-speaking peoples fight to preserve.

They have had to watch over the liberty of the subject even to hear cases against the executive, while at the same time upholding the security of the State—a task reconciling two conflicting values and not always easy to perform. Yet the Englishman derives a definite sense that "all is well" from the knowledge that even in the most critical moments of the war he can walk into the courts and see civil and criminal justice being meted out according to the ancient forms that have safeguarded his freedom against mob and monarch for close on ten centuries. For this reason the judges of the high court decided, from the outbreak of war, that they would continue to sit in the capital and those provincial centers through which the king's justices have continued to journey "on circuit" to try local issues, civil and criminal, ever since the thirteenth century.

In London the courts never ceased to sit regularly in their usual places, even at the height of the blitz in 1940; though there were occasions like that on which a certain judge adjourned his court to the shelter because it was a criminal case he was trying and, as he put it, "there is one of us in this Court not at liberty to move as he pleases."

But, though continuing to sit, the courts have not been so busy as in peacetime.

In a normal year the high court of justice reckons on a list of some 1,800 cases while in those inferior local "county courts" that handle disputes not involving more than £100 (more if the parties agree) there were in the last year of peace 1,121,000 actions initiated. Now the number of high court cases has dropped to a quarter of its peacetime figure, and only 533,000 cases have been set down in the county court.

By comparison, even allowing for the fact that criminal trials (by the multiplication of offences under the special defence regulations) and divorce actions are at about the peacetime level, the decrease among practising lawyers has not been in the same proportion.

In England the legal profession is exercised by some 17,000 solicitors, whose task is to advise the client and prepare his case, and by about 3,500 barristers, expert in the law, who have to conduct the case.

Rather more than 11,000 solicitors and about 1,700 barristers are away on war service. So those left find themselves with less work to share out, while such work as there is, is less remunerative and decidedly less spectacular.

In civil cases the jury has virtually been abolished for the duration of the war. The right of a client to insist on one remains. But in fact clients seldom care to expend the time and trouble of preferring and establishing such a claim. Thus the chance of the great advocate to make moving speeches is destroyed and with it goes his power to command high fees. This is as well, as few people in wartime Britain have overmuch to spend on their private disputes. But it deprives the barristers' calling of much of the romance and glamour that used to surround it.

Today it is only in criminal trials that a jury survives, and its size has been reduced from twelve to seven so that the minimum number of citizens shall be taken away from war work, or from their various duties in national defense. Nor do the lawyers' wartime sacrifices end here. The serving solicitor is protected because, being a member of a firm, he draws his share of profits wherever he may be. But for the barrister, who is working by himself, the case is different. At the outbreak of war the governing body of the English bar decided to

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RUTHERFORD B. HAYES
IN WAR AND IN PEACE*

By GEORGE R. FARNUM
of Boston
Former Assistant Attorney General of the United States

RUTHERFORD B. Hayes was a product of the Western Reserve of Ohio. His father had come from New England in 1817, traveling with his family in a covered wagon, and had settled in the town of Delaware, where he established himself in the business of distilling whiskey. Here, in the first brick house the community could boast, the future President was born on October 4, 1822, a few months after his father's death. A wealthy uncle came to the rescue of the family thus deprived of the breadwinner, with the result that Hayes, unlike Garfield, was never to experience the struggles and trials of early poverty. An Ohio district school, private institutions in Connecticut, and finally Kenyon College in his native state, provided his general education.

He left Kenyon with the settled determination to become a lawyer and promptly commenced reading law in a Columbus office. After struggling with Blackstone, largely on his own, for a little short of a year, he gave up in favor of classroom instruction, and entered the Harvard Law School. Here he enjoyed the rare good fortune of studying under Judge Story and Professor Greenleaf. His early impressions of these great teachers he thus recorded in his diary: "Mr. Greenleaf is very searching and logical in examination. It is impossible for one who has not faithfully studied the text to escape exposing his ignorance; he keeps the subject constantly in view, never stepping out of his way for the purpose of introducing his own experience. Judge Story, on the other hand, is very general in his questions, so that persons skilled in nods, affirmative and negative shaking of the head, need never more than glance at the text to be able to answer his interrogatories. He is very fond of digressions to introduce amusing anecdotes, high-wrought eulogies of the sages of the law, and fragments of his own experience. He is generally very interesting, and often quite eloquent."

The profound respect in which Story held Marshall must have been reflected in many a classroom allusion. As Hayes reported one, "Chief Justice Marshall was the growth of a century. Providence grants such men to the human family only on great occasions to accomplish its own great ends. Such men are found only when our need is the greatest."

From his two distinguished mentors Hayes received a lofty conception of the calling of a lawyer. He noted a remark of Story that "as a body, lawyers, so far as his observations extended, were more eminent for morality and a nice sense of honor than any other class of men," and as coming from Greenleaf the observation, "A lawyer is engaged in the highest of all human pursuits—the application of the soundest reason and purest morality to the ordinary affairs of life."

An anecdote that Story related must have had a profound influence on the ideals of young Hayes. Thus he took it down. "When a young lawyer," said Judge Story, "I was told by a member of the bar at which I practiced, who was fifteen years my senior in the profession, that he wished to consult me in a case of conscience. Said he: 'You are a young man and I can trust you. I want your opinion. The case is this: I am engaged in an important cause; my adversary is an obstinate, self-willed, self-sufficient man, and I have him completely in my power. I can crush his whole case; it is in my hand, and he does not know it, does not suspect it. I can gain the case by taking advantage of this man's ignorance and overweening confidence. Now, the point is, Shall I do it?' I answered, 'I think not.' 'I think not, too,' he replied. 'I have determined to go into court tomorrow, show him his error, and set him right.' He did it. This was forty-five years ago, but I have never forgotten that act nor that man. He is still living, and I have looked upon him and his integrity as beyond all estimate. I would trust him with untold millions, nay, with life, with reputation, with all that is dear."

Hayes was admitted to the Ohio Bar in 1845 and hopefully hung out his shingle in Lower Sandusky (later Fremont). Clients, however, were slow in appearing and the young practitioner became despondent and restless. After remaining there for five years, which he later characterized as a waste of precious time, he removed to Cincinnati and made a new start. There he quickly achieved a considerable success, curiously enough for one of his type and temperament, largely in criminal cases. His most notable success was in the defense of a repulsive creature, Nancy Farrer, accused of wholesale poisonings. Brought to trial for the murder of her last victim Hayes rested her defense principally upon a plea of insanity. After deliberating for three days the jury returned a verdict of guilty, which Hayes succeeded in upsetting in the Supreme Court. He closed the record with the

* This is the ninth in a series of biographies of eminent soldier-lawyers written by Mr. Farnum for the JOURNAL.

diary entry, "She will now go to a lunatic asylum and so my first case involving life is ended successfully. It has been a pet case with me; has caused me much anxiety, given me some prominence in my profession, and indeed was the case which first brought me practice in this city."

In 1858 he was elected City Solicitor, and at the close of the following year, which marked the end of ten years in Cincinnati, he modestly summed up his professional accomplishments "without any extraordinary success, without that sort of success which makes men giddy sometimes, I have nevertheless found what I sought—a respectable place. Good!"

With the coming of the fateful year of 1861, Hayes put aside all other preoccupations and turned his thoughts to soldiering. As a boy he had dreamed of the high drama and romantic glamor of war. The Mexican embroglio had beckoned him to exploits of valor and the experience that might have seasoned him for the epic conflict ahead. Though confiding at the time to his diary that "I have no views about war other than those of the best Christians, and my opinion of this war with Mexico is that which is common to the Whigs of the North," this youth of twenty-four whimsically conceded, "My philosophy has no better principle than that of the old woman who, while she mourned over her neighbor's calamity, was yet rejoiced to be able to witness the conflagration." However, destiny intervened in the form of a throat affection and regretfully he abandoned his ambition to serve.

Secession came, the guns commenced firing at Sumter, Lincoln called for volunteers and Hayes enlisted "for the duration," declaring to a friend, "I would prefer to go into it if I knew I was to die or be killed in the course of it, than to live through and after it without taking any part in it." Though entirely without military training or experience, he was promptly commissioned major in the 23rd Ohio Infantry under the colonelcy of the famous W. S. Rosecrans and the lieutenant-colonelcy of his friend Stanley Matthews, afterwards Justice of the United States Supreme Court.

The sequel proved Hayes to be an intelligent and brave officer, inspired by a serious devotion to the cause he espoused. From beginning to end he participated in more than fifty engagements, large and small. Through successive promotions he attained the rank of major general.

At South Mountain, in the course of an assault against a strongly fortified hill, Hayes, though severely wounded, continued to direct operations until he found himself lying helpless between the opposing lines. From this perilous predicament he was ultimately rescued and carried off the field. Of the experiences of this bloody day Hayes recorded one of those little incidents which help to relieve the grim annals of the battlefields: "While I was lying down I had considerable talk with a wounded Confederate soldier lying near me. I gave him messages for my wife and friends in case I should not get up. We were right jolly and friendly. It was by no means an unpleasant experience."

As brigade commander he fought with Sheridan in the Valley. At Winchester, while Crooks' corps in which he served was held in reserve waiting orders, Crooks and Hayes and their staffs dallied of a beautiful September day in a clover field. Thus it is recorded these men with bloody work impending whiled away the time in light and cheerful banter. Crooks smilingly complained, "I cannot find a four-leaved clover, so I suppose we shall have to go in." Hayes rejoined, "I saw the moon over my left shoulder, so I suppose we must go in." A staff officer volunteered, "One of my socks is on wrong side out, so I suppose we must go in." And in they went, and many a good man and true never came back to tell the tale and rejoice in the laurels which were garnered. None fought with more gallantry that day than Hayes, who in the thickest of the fight seemed to have a charmed life.

In 1864 Hayes received the Republican nomination for Congress from his home district. Importuned by a friend to come back and participate in the campaign, he wrote from Sheridan's camp, "Your suggestion about getting a furlough to take the stump was certainly made without reflection. An officer fit for duty who at this crisis would abandon his post to electioneer for a seat in Congress ought to be scalped. You may feel perfectly sure I shall do no such thing." Hayes was elected notwithstanding, and that letter earned him big dividends in the years to come.

With the end of the war Hayes declared, "I intend to quit public life as soon as my term in Congress ends." Therein he showed himself a poor reader of his own horoscope. In 1866 he was reelected to Congress but resigned the following year upon his nomination as Republican candidate for Governor of his state. In the election he was successful and succeeded himself two years later. Refusing to break the third term precedent, he declined a renomination in 1871. Four years later, however, he was back again in the political lists as a gubernatorial candidate, confiding to his diary, "Several suggest that if elected Governor now, I will stand well for the Presidency next year. How wild! What a queer lot we are becoming!" He was still misreading his stars!

In the year 1876, the Republican National Convention was held in his own city. Happy augury! Though the "plumed knight", James G. Blaine, as Robert G. Ingersoll characterized him in his memorable nominating speech, was a distinct favorite, on the seventh ballot Hayes received the nomination. "Friday has been a lucky day for me before," he declared.

The ensuing campaign with Tilden and the contested election constitute one of the most dramatic and important episodes in American political history. Of the creation of the extraordinary electoral commission

(Continued on page 474)

PROGRAM FOR 66th ANNUAL MEETING

CHICAGO, ILLINOIS, AUGUST 23-26, 1943

THE ASSEMBLY

Monday, August 23

FIRST SESSION

Ball Room, Hotel Knickerbocker

10:00 A.M.

The President, presiding

Call to order

Addresses of welcome by:

Hon. Floyd E. Thompson, President of the Chicago Bar Association

Warren B. Buckley, President of the Illinois State Bar Association

Response by the Honorable John M. Slaton, Atlanta, Georgia

THE CHAIRMAN OF THE HOUSE, PRESIDING

Annual Address of the President of the Association

Opportunity for offering of resolutions, pursuant to Article IV, Section 2, of the Constitution

Statement concerning the work of the American Law Institute, by Honorable Herbert F. Goodrich, Philadelphia, Pennsylvania

Announcement by the Secretary of vacancies, if any, in the offices of State Delegates and Assembly Delegates

Nomination and election of Assembly Delegates to fill vacancies

Nomination of four Assembly Delegates for two-year term ending with adjournment of the 1945 Annual Meeting

(Meetings of members present from states in which a vacancy exists in the office of State Delegate will be held immediatly following adjournment, to fill such vacancies.)

Tuesday, August 24

SECOND SESSION

Ball Room, Hotel Knickerbocker

8:30 P.M.

The President, presiding

Addresses by:

Robert P. Patterson, Under-Secretary of War, Washington, D.C.

Brigadier General Cornelius W. Wickersham, Commandant, School of Military Government, Charlottesville, Virginia

A motion picture, "Military Justice and Court Martial Procedure."

Wednesday, August 25

THIRD SESSION

Ball Room, Hotel Knickerbocker

9:30 A.M.

The President, presiding

Election (by ballot) of four Assembly Delegates for two-year term ending with adjournment of 1945 Annual Meeting

Second Annual Meeting of American Bar Association Endowment*

Address by the Honorable Campbell C. McLaurin, Justice of the Supreme Court of Alberta, representative of the Canadian Bar Association

Report by the Chairman of the House of Delegates (or the Secretary) as to matters requiring action by the Assembly

Amendments to the Constitution and By-Laws

Presentation of Winner of the Ross Bequest Award

Presentation of the American Bar Association Medal

Wednesday, August 25

FOURTH SESSION

Ball Room, Hotel Knickerbocker

8:30 P.M.

The President, presiding

Addresses by:

Honorable Wiley Blount Rutledge, Jr., Associate Justice, Supreme Court of the United States

The Right Honorable Sir Donald Bradley Somervell, O.B.E., M.P., K.C., Attorney General of England.

At ten o'clock

Gold Coast Room, The Drake

Reception by the President of the Association to members and guests. Dancing. Refreshments.

Thursday, August 26

9:30 A.M.

FIFTH SESSION

The President, presiding

Presentation of award of merit to a state bar association and a local bar association

*This meeting at which the President of the Endowment, Jacob M. Lashly, will preside, will be held for the purpose of electing one director. All members of the Association are members of the Endowment.

Address by the Honorable J. William Fulbright, member of Congress from Arkansas

Address by the Honorable Robert A. Taft, United States Senator from Ohio

Report by Chairman of the House of Delegates (or the Secretary) as to matters requiring action by the Assembly

Open Forum—Report of Resolutions Committee, Honorable Homer Cummings, Chairman

Thursday, August 26

Immediately following the adjournment of the afternoon session of the House of Delegates

SIXTH SESSION

Ball Room, The Drake

The President, presiding

Report by Chairman of the House of Delegates of the action upon resolutions previously adopted by the Assembly

Action by the Assembly upon any resolutions previously adopted by the Assembly but disapproved or modified by the House

Unfinished business

New business

Presentation of new officers and members of the Board of Governors

Adjournment

Thursday, August 26

ANNUAL DINNER

Gold Coast Room, The Drake

The President, presiding

Speakers:

The Right Honorable Sir Donald Bradley Somervell, O.B.E., M.P., K.C., Attorney General of England

Harry E. Meek, Little Rock, Arkansas

Introduction of the incoming President

THE HOUSE OF DELEGATES

Ball Room, The Drake

The sessions convene promptly at 2:00 P.M. Monday, August 23; 2:00 P.M. Wednesday, August 25; and 2:00 P.M. Thursday, August 26. Items on the calendar will be considered in the order in which they appear.

The President, presiding

Roll Call

Report of the Committee on Credentials and Admissions, Bernard J. Myers, Chairman, Pennsylvania

Approval of the record

THE CHAIRMAN OF THE HOUSE OF DELEGATES, PRESIDING

Statement of the Chairman of the House of Delegates, Guy Richards Crump, California

Report of the Treasurer, John H. Voorhees, South Dakota

Report of the Chairman of the Budget Committee, Sylvester C. Smith, Jr., New Jersey

Election of Members of the Board of Governors, as prescribed by the Constitution, Article VIII, Section 3

Offering of resolutions for reference to Committee on Draft

Report of the Board of Governors, Harry S. Knight, Secretary, Pennsylvania

Reports of Committees:*

Unauthorized Practice of the Law, Edwin M. Otterbourg, Chairman, New York

Legal Aid Work, Harrison Tweed, Chairman, New York

Customs Law, Albert MacC. Barnes, Chairman, New York

Securities Laws and Regulations, John Gerdes, Chairman, New York

State Legislation, William A. Schnader, Chairman, Pennsylvania

Report of the Committee on Rules and Calendar (including proposed Amendments to the Constitution and By-Laws), Howard L. Barkdull, Chairman, Ohio

Report of Committee on Coordination and Direction of War Effort, George Maurice Morris, Chairman, Washington, D. C.

Divisional Committees:

War Work, Tappan Gregory, Chairman, Illinois

Civilian Defense, Philip J. Wickser, Chairman, New York

American Citizenship, Herbert J. Goodrich, Chairman, Pennsylvania

Bill of Rights, Douglas Arant, Chairman, Alabama

Improving the Administration of Justice, John J. Parker, Chairman, North Carolina

Public Information Program, Robert E. Freer, National Director, Washington, D. C.

Labor, Employment and Social Security, Richard B. Scandrett, Jr., Chairman, New York

Custody and Management of Alien Property, Joseph W. Henderson, Chairman, Pennsylvania

Reports of Committees:

Ways and Means, Benjamin Wham, Chairman, Illinois

Civil Service, Murray Seasongood, Chairman, Ohio

Public Relations, Sylvester C. Smith, Jr., Chairman New Jersey

Economic Condition of the Bar, Charles B. Stephens, Chairman, Illinois

Commerce, Louis A. Lecher, Chairman, Wisconsin

Facilities of the Law Library of Congress, Frank J. Hogan, Chairman, Washington, D. C.

Law Lists, Cushman B. Bissell, Chairman, Illinois

Professional Ethics and Grievances, Orie L. Phillips, Chairman, Colorado

*Rule VII, Par. 4 provides that "reports that are printed in Advance Program or otherwise . . . shall not be read orally . . . but shall be stated in substance only."

Judicial Selection and Tenure, John Perry Wood, Chairman, California
Judicial Salaries, William H. Watkins, Chairman, Mississippi
Jurisprudence and Law Reform, James William Moore, Chairman, Connecticut
Administrative Law, Carl McFarland, Chairman, Washington, D. C.
Communications, Herbert M. Bingham, Chairman, Washington, D. C.
Low-Cost Legal Service Bureaus, Nathan Cayton, Chairman, Washington, D. C.
Admiralty and Maritime Law, Carl V. Essery, Chairman, Michigan
Aeronautical Law, Royce G. Rowe, Chairman, Illinois

Report of the National Conference of Commissioners on Uniform State Laws, John Carlisle Pryor, President, Iowa

Reports of Sections:
Bar Organization Activities, Charles M. Lyman, Chairman, Connecticut
Junior Bar Conference, Joseph D. Calhoun, Chairman, Pennsylvania
Legal Education and Admissions to the Bar, Albert J. Harno, Chairman, Illinois

Report of Special Committee on Current Patent Problems, Hugh M. Morris, Chairman, Delaware

Reports of Sections:
Patent, Trade-Mark and Copyright Law, John A. Dienner, Chairman, Illinois
Insurance Law, Chase M. Smith, Chairman, Illinois
Municipal Law, Ambrose Fuller, Chairman, Illinois
Criminal Law, James J. Robinson, Chairman, Washington, D. C.
Judicial Administration, George Rossman, Chairman, Oregon
International and Comparative Law, Edward W. Allen, Chairman, Washington
Commercial Law, W. Leslie Miller, Chairman, Michigan
Taxation, Weston Vernon, Jr., Chairman, New York
Real Property, Probate and Trust Law, Robert F. Bingham, Chairman, Ohio
Mineral Law, Floyd A. Calvert, Chairman, Michigan
Public Utility Law, John J. Burns, Chairman, Massachusetts

Report of Committee on Post-War-Work Correlation, Carl B. Rix, Chairman, Wisconsin

Report to the House of Delegates upon Resolutions adopted by Assembly for action by the House

Director of Membership, David A. Simmons, Texas

Reports of House Committees:
Draft, Charles M. Lyman, Chairman, Connecticut
Hearings, Joseph Rosch, Chairman, New York
Credentials and Admissions, Bernard J. Myers, Chairman, Pennsylvania

Presentation of any matters which any state or local bar association or any affiliated organization of the legal profession wishes to bring before the House of Delegates

Presentation of any matters which any section or standing or special committee of the Association wishes to bring before the House of Delegates

Report of the Board of Elections, Edward T. Fairchild, Chairman, Wisconsin

Unfinished Business

New Business

THE PRESIDENT IN THE CHAIR

Statement of certification of nominations for officers, Harry S. Knight, Secretary, Pennsylvania

Election of Officers

Programs of Committees and Sections

COMMITTEE ON IMPROVING THE ADMINISTRATION OF JUSTICE

Monday, August 23

2:00 P.M.

Joint session with Section of Judicial Administration and National Conference of Judicial Councils

For full program, see page 444

7:30 P.M.

Dinner

Jointly with Section of Judicial Administration and National Conference of Judicial Councils

Tuesday, August 24

10:00 A.M. and 2:00 P.M.

Joint meeting with Sections of Criminal Law and Judicial Administration, and National Conference of Judicial Councils

For full program, see page 441

CONFERENCE COMMITTEE ON ADJUSTERS

Sunday, August 22

10:00 A.M.

LEGAL AID WORK

Wednesday, 12:30 P.M.

Luncheon

Harrison Tweed, Chairman, presiding

Seventh Annual Open Meeting of Legal Aid Committees of State and Local Bar Associations and Others Interested in Legal Aid Work

PUBLIC INFORMATION PROGRAM

All delegates, members and guests, as well as all state and local directors and program speakers, are invited to the Headquarters of the Public Information Pro-

gram to view an exhibit of organization charts and program materials of the Program. Open Sunday, August 22 and throughout the meeting.

SECTIONS

BAR ACTIVITIES

Charles M. Lyman, Chairman, presiding

Tuesday, August 24

8:00 A.M.

Breakfast meeting of officers and members of Council

9:45 A.M.

General meeting, devoted to "The Organized Bar and the War"

Minutes of 1942 Annual Meeting, Thomas C. Batchelor, Secretary, Indianapolis, Indiana

Report of the Section, by the Chairman

Announcement of appointment of Nominating Committee

"The Work of the Association Secretaries," Miss Emma E. Dillon, Trenton, New Jersey

"The Activities of the State Bar Associations," Burt J. Thompson, Forest City, Iowa

"The Latest on State Bar Integration," George E. Brand, Detroit, Michigan

"The Award of Merit, So Far as Can Be Divulged," Honorable John M. Slaton, Atlanta, Georgia

"Junior Bar Cooperation Throughout the Nation," Hubert Day Henry, Denver, Colorado

"Activities of the State Bar of California (Winner of 1942 Award of Merit)" Frank B. Belcher, President, State Bar of California, Los Angeles, California

"The Future of the Section," Carl B. Rix, Milwaukee, Wisconsin

Election and induction of officers

2:45 P.M.

"The War Work of the Organized Bar"—Panel Discussion of the Legal Assistance Office Techniques for Cooperation

Speakers:

- The Judge Advocate General of the United States Army, Major General Myron C. Cramer
- The Judge Advocate General of the United States Navy, Admiral Walter Browne Woodson
- Colonel Julien C. Hyer, Chief, Judge Advocate Branch, Eighth Service Command

The Panel:

- Major Milton J. Blake, Chief, Legal Assistance Branch, Judge Advocate General's Department, United States Army
- Harold H. Bredell, Executive Assistant, Committee on Coordination and Direction of War Effort, American Bar Association
- Leonard J. Emmerglick, Administrative Assistant, Committee on Coordination and Direction of War Effort
- Tappan Gregory, Chairman, War Work Committee, American Bar Association
- Lieutenant Commander E. I. Snyder, United States Navy

Questions and comment from the floor by both civilian and armed forces members of the audience will be invited and expected.

COMMERCIAL LAW

W. Leslie Miller, Chairman, presiding

Sunday, August 22

9:30 A.M.

Meeting of Council and Committee Chairmen

Tuesday, August 24

10:00 A.M.

Report of Chairman

Appointment of Nominating Committee

Reports of Committees:

- Banking, Charles B. Dunn, Chairman, Chicago, Illinois
- Bankruptcy and Liquidations, Frank Stonecipher, Chairman, Pittsburgh, Pennsylvania
- Conditional Sales and Chattel Mortgages, Joseph G. Myerson, Chairman, New York City
- Corporations, Millard B. Kennedy, Chairman, Chicago, Illinois

12:30 P.M.

Luncheon

Jointly with Sections of Municipal Law and Taxation

W. Leslie Miller, Chairman, Section of Commercial Law, presiding

Address by Honorable Harry F. Kelly, Governor of Michigan

2:00 P.M.

Discussion of Section 270 of the Chandler Act

- Participants: Benjamin Wham, Albert K. Orschel, Homer J. Livingston, Charles S. J. Banks, Luther D. Swanstrom, Carroll A. Teller, all of Chicago, Illinois

2:45 P.M.

Reports of Committees:

- Negotiable Instruments, William E. Britton, Chairman, Chicago, Illinois
- Reorganizations, John Gerdes, Chairman, New York City
- Sales and Use Taxes, Carroll A. Teller, Chairman, Chicago, Illinois
- Special Committee on H.R. 7814, John M. Niehaus, Jr., Chairman, Chicago, Illinois

Report of Nominating Committee

Election of Council and Officers

New Business

Adjournment

CRIMINAL LAW

Monday, August 23

2:30 P.M.

Earl Warren, Vice Chairman, presiding

Message to the Section of Criminal Law from the

Attorney General of the United States
Subject: Section Scope and Plan for 1943-1944
Discussion led by Committee Chairmen:
Supreme Court Rules for Criminal Procedure, Homer Cummings, Chairman, Washington, D. C.
Military Offenses and Jurisdiction, William C. Rigby, Chairman, Washington, D. C.
Courts and Wartime Social Protection, John M. Goldsmith, Chairman, Radford, Virginia
Coordination of Law Enforcement Agencies, Earl Warren, Chairman, Sacramento, California
International Cooperation in Criminal Law Administration, James J. Robinson, Acting Chairman, Washington, D. C.
Police Training and Administration, John R. Snively, Chairman, Rockford, Illinois
Magistrates and Traffic Courts, William J. Barron, Chairman, Washington, D. C.
Procedure, Prosecution and Defense, Wendell Berge, Chairman, Washington, D. C.
Sentencing, Probation, Prisons and Parole, Wayne L. Morse, Chairman, Washington, D. C.
Education and Practice, James H. Wilkerson, Chairman, Chicago, Illinois
Cooperation with National Associations, Rollin M. Perkins, Chairman, Iowa City, Iowa
Report of the Chairman
Report of the Secretary
Appointment of the Nominating Committee

7:30 P.M.

Dinner

Jointly with Section of Judicial Administration, National Conference of Judicial Councils and Committee on Improving the Administration of Justice

Tuesday, August 24

10:00 A.M.

Joint Session with the Section of Judicial Administration, the Committee on the Improvement of the Administration of Justice, and the National Conference of Judicial Councils

Honorable George Rossman, Chairman, Section of Judicial Administration, presiding

Institute on Federal Rules of Criminal Procedure (Preliminary draft)
Address by Honorable Homer Cummings, former Attorney General of the United States
Preliminary Procedure: Arrest, summons, counsel, commitment, bail
Rules 3-6, 10, 32, 33, 39 and 42; Forms 7-12
Panel: (Subject to further announcement)
Carroll C. Hincks, U. S. District Judge, New Haven, Connecticut
Gunnar H. Nordbye, U. S. District Judge, Minneapolis, Minnesota
Stuart B. Campbell, Wytheville, Virginia
M. Neil Andrews, U. S. Attorney, Atlanta, Georgia
Frank N. Richman, Judge of the Supreme Court of Indiana, Indianapolis, Indiana
Indictment and Information: Grand jury, waiver, joinder, joint and separate trial
Rules 7-9, 14 and 15; Forms 1-6 and 13
Panel: (Subject to further announcement)
John B. Sanborn, U. S. Circuit Judge, St. Paul, Minnesota
Orie L. Phillips, U. S. Circuit Judge, Denver, Colorado
William F. Smith, U. S. District Judge, Newark, New Jersey
Robert F. Maguire, Portland, Oregon
Frederick V. Follmer, U. S. Attorney, Lewisburg, Pennsylvania
James R. Morford, Attorney General, Wilmington, Delaware

2:00 P.M.

James J. Robinson, Chairman, Section of Criminal Law, presiding

Address by Honorable Wendell Berge, Assistant Attorney General in charge of the Criminal Division, Department of Justice, Washington, D. C.
Pleadings and Preparation for Trial: Arraignment, pleas and motions, pre-trial procedure, alibi notice, depositions
Rules 11-13, 16-20, 43 and 44; Form 14
Panel: (Subject to further announcement)
Walter C. Lindley, U. S. District Judge, Danville, Illinois
Emerich B. Freed, U. S. District Judge, Cleveland, Ohio
Paul J. McCormick, U. S. District Judge, Los Angeles, California
Joseph T. Votava, U. S. Attorney, Omaha, Nebraska
Douglas W. McGregor, U. S. Attorney, Houston, Texas
Floyd J. Mattice, Washington, D. C.
Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska, Lincoln, Nebraska
Trial: Jury, selection and waiver; evidence, witnesses.
Rules 21-29, 34, 38 and 40
Panel: (Subject to further announcement)
Merrill E. Otis, U. S. District Judge, Kansas City, Missouri
Herbert S. Phillips, U. S. Attorney, Tampa, Florida
Ernest A. Inglis, Judge of the Superior Court, Middletown, Connecticut
Judgment and Appeal: Pre-sentence investigation, new trial, preparation of record, exception and harmless error
Rules 30, 31, 35-37, 47 and 48
Panel: (Subject to further announcement)
John Biggs, Jr., U. S. Circuit Judge, Wilmington, Delaware
Benjamin Harrison, U. S. District Judge, Los Angeles, California

Leo Rover, Washington, D. C.
B. Howard Caughran, U. S. Attorney, Indianapolis, Indiana
Laurance M. Hyde, Judge of the Supreme Court of Missouri, Jefferson City, Missouri

Dinner

7:00 P.M.

The committee chairmen and other members of the Section of Criminal Law will hold a dinner meeting, concluding the business of the section.

INSURANCE LAW

Sunday, August 22

12:00 M.

Meeting of Council

Monday, August 23

2:00 P.M.

GENERAL SESSION

Chase M. Smith, Chairman, presiding

Address of Welcome by:
Honorable Paul F. Jones, State Director of Insurance
Administrative Reports:
Secretary, John F. Handy, Springfield, Massachusetts
Membership, Henry S. Moser, Chairman, Chicago, Illinois
Publications, Lionel P. Kristeller, Chairman, Newark, New Jersey
Appointment of Nominating Committee
Memorial to Former Chairman John W. Cronin
Address, "The Veterans Administration's Program for Persons in Service During World War II," by Horace L. McCoy, Director of Insurance, Veterans Administration, Washington, D. C.
Reports by Chairmen of General Committees:
Automobile Insurance Law, F. B. Baylor, Chairman, Lincoln, Nebraska
Aviation Insurance Law, W. Percy McDonald, Chairman, Memphis, Tennessee
Casualty Insurance Law, Hugh D. Combs, Chairman, Baltimore, Maryland
Fidelity and Surety Insurance Law, J. Kemp Bartlett, Jr., Chairman, Baltimore, Maryland
Fire Insurance Law, F. W. Davies, Chairman, Birmingham, Alabama
Health and Accident Insurance Law, Oliver H. Miller, Chariman, Des Moines, Iowa
Inland Marine Insurance Law, Robert E. Hall, Chairman, Hartford, Connecticut
Insurance Law Practice, Wilbur E. Benoy, Chairman, Columbus, Ohio
Life Insurance Law, Ralph H. Kastner, Chairman, Chicago, Illinois
Marine Insurance Law, George E. Beechwood, Chairman, Philadelphia, Pennsylvania
Qualification and Regulation of Insurance Companies, Franklin J. Marryott, Chairman, Boston, Massachusetts
Workmen's Compensation and Employer's Liability Insurance Law, Clarence W. Heyl, Chairman, Peoria, Illinois
Special Committee on Annotation of War Risk Clauses, George E. Beechwood, Chairman, Philadelphia, Pennsylvania
(Those committee reports not reached at the time of adjournment will be in order at the Wednesday afternoon session)

Tuesday, August 24

ROUND TABLES

9:30 A.M.

Round Table I

Automobile Insurance Law, F. B. Baylor, Chairman, presiding
Effect of and Problems Arising from Financial Responsibility Laws, by William J. B. Aberg, Madison, Wisconsin
Questions Arising from Share-the-Ride Plans, by Lenn J. Oare, South Bend, Indiana

Round Table II

Fire Insurance Law and Inland Marine Insurance Law: F. W. Davies, Chairman, Committee on Fire Insurance Law, presiding
Legal Relations Between the Company and its Local Agents who Issue Policies, by C. G. Myers, Chicago, Illinois
A Review of Fire Insurance Decisions for the Past Year, by T. M. Galphin, Jr., Louisville, Kentucky
Historical Background and Definition of Inland Marine Insurance, by A. Chalmers Charles, New York City

Round Table III

Health and Accident Insurance Law, Oliver H. Miller, Chairman, presiding
Accident and Health Insurance in Times of War, by Harold R. Gordon, Chicago, Illinois
Discussion led by Mark E. Archer, Indianapolis, Indiana
The Insuring Clause in Health and Accident Insurance, by Bess Blake, Nashville, Tennessee
Discussion led by John D. Randall, Cedar Rapids, Iowa

Round Table IV

Workmen's Compensation Law, Clarence W. Heyl, Chairman, presiding
Status of Illegally Employed Minors under the Various Workmen's Compensation Acts, by John F. Hynes, Des Moines, Iowa
Reviewed by paper to be read by E. Dean Alexander, Detroit, Michigan

Trend of Decisions in Silicosis Cases, by W. Edwin Moser, St. Louis, Missouri.
Reviewed by paper to be read by William Greene, Chicago, Illinois

Round Table V

Fidelity and Surety Insurance Law, J. Kemp Bartlett, Jr., Chairman, presiding
Surety's Rights as Affected by Claim of United States for Contractor's Unpaid Taxes, by Elmer B. McCahan, Jr., Baltimore, Maryland
Problems of the Fiduciary and his Surety when the Estate Includes an Interest in a Business, by Arthur C. Holmes, Baltimore, Maryland

2:00 P.M.

Round Table VI

Marine Law, George E. Beechwood, Chairman, presiding
Recent Aspects of Marine and War Risk Insurance Affecting Outgoing Cargo, by Hawley T. Chester, President, Chubb and Sons, New York City
Recent Aspects of Marine and War Risk Insurance Affecting Merchant Vessels, by Roy W. Chamberlain, of the New York Bar

Round Table VII

Aviation Insurance Law, W. Percy McDonald, Chairman, presiding
Aviation Insurance Law in Light of Pending Legislation, by Webb Shadle, General Counsel, Civil Aeronautics Authority, Washington, D. C.
Air Transport Insurance, by E. Smythe Gambrell, General Counsel, Eastern Air Lines, Atlanta, Georgia

Round Table VIII

Casualty Insurance Law, Hugh D. Combs, Chairman, presiding
Products Liability, by Sol Weiss, Sr., New Orleans, Louisiana
Contract Liability, by Kenneth B. Cope, Canton, Ohio

Round Table IX

Insurance Law Practice and Procedure, Wilbur E. Benoy, Chairman, presiding
Third Party Practice, Rule 14, by George J. Cooper, Detroit, Michigan
Summary Judgments, Rule 56, by John Martin, Philadelphia, Pennsylvania
Depositions, Rules 26 and 31, by J. A. Gooch, Fort Worth, Texas
Evidence and Conflicts with State Practice, Rule 43, by Sam Levin, Chicago, Illinois
Panel discussion on Necessity for Amendments to Specific Rules of Federal Procedure for the District Courts

Round Table X

Life Insurance Law, Ralph H. Kastner, Chairman, presiding
Employees' Trusts, by Paul Millett, Chicago, Illinois
Handling of War Death Claims under Life Insurance Policies, by John W. Fischbach, St. Paul, Minnesota
Conflicts of Law Problems Affecting Group Insurance, by Abram T. Collier, Boston, Massachusetts

Reception

6:30 P.M.

Dinner

7:30 P.M.

Wednesday, August 25
2:00 P.M.

General Session

Chase M. Smith, Chairman, presiding

Introduction of Speakers
Addresses:
"Paul v. Virginia—A Review of the Past and a Look Into the Future," by John B. Gontrum, Insurance Commissioner of the State of Maryland
"Aviation Insurance After the War," by Jennings Randolph, Member of Congress
Unfinished business
Committee reports
New Business:
Council reports and recommendations, John F. Handy, Secretary
Miscellaneous business suggested by any committee or member
Report of the Nominating Committee
Election of Officers
Introduction of new Officers
Adjournment

INTERNATIONAL AND COMPARATIVE LAW

Monday, August 23
2:00 P.M.

Edward W. Allen, Chairman, presiding

Address of Welcome, by Charles H. Watson, Chicago, Illinois
Report of the Chairman, Edward W. Allen, Seattle, Washington
Report of Washington meeting, Aubrey Bogley, Washington, D. C.
Report of Rio de Janeiro Meeting, Inter-American Bar Association, William Roy Vallance, Secretary-General
Reports of Committees:
Membership, Allen Hunter White, Chairman, Philadelphia, Pennsylvania

Latin-American Law, Otto Schoenrich, Chairman, New York City

"Comparative Treatment of Enemy Private Property by Belligerents," Mitchell B. Carroll, New York City

Reports of Committees:

Property Rights of Aliens, Otto C. Sommerich, Chairman, New York City

Protection of American Citizens and their Property Abroad, John P. Bullington, Chairman, Houston, Texas

Discussion

"Basis for a World Constitution and Bill of Rights," Professor W. Percy Bordwell, University of Iowa

"The Progress of the International Bill of Rights," Honorable Herbert F. Goodrich, Judge of the Third Circuit Court of Appeals

Report of Committee on a World Constitution and Bill of Rights, Arthur T. Vanderbilt, Chairman, Newark, New Jersey.

Discussion

Reports of Committees:

Military and Naval Law, Col. William Cattron Rigby, Chairman, Washington, D. C.

Comparative Philosophy and History of Law, Roscoe Pound, Chairman, Cambridge, Massachusetts

International Law in the Courts of the United States, James Oliver Murdock, Chairman, Washington, D. C.

Transportation and Communications, Edgar Turlington, Chairman, Washington, D. C.

Appointment of Nominating Committee

Tuesday, August 24

Luncheon

12:30 P.M.

Edward W. Allen, Chairman, presiding

Speakers:

Major General Myron C. Cramer, Judge Advocate General of the United States Army

Sir Owen Dixon, The Australian Minister to the United States

2:00 P.M.

Mitchell B. Carroll, Vice Chairman, presiding

Reports of Committees:

Fisheries, Territorial Waters and Exploitation of the Seas, Major Willard B. Cowles, Chairman, Washington, D. C.

Revision and Codification of United States Nationality and Immigration Laws, Henry F. Butler, Chairman, Washington, D. C.

Comparative Penal Law and Procedure, Justin Miller, Chairman, Washington, D. C.

"Punishment of War Criminals", address and report of committee, Edwin D. Dickinson, Chairman, Washington, D. C.

Discussion

"Post-War Judicial Organization," Edgar Turlington, Washington, D. C.

"Regional Courts," James Oliver Murdock, Washington, D. C.

Report of Committee on Post-War Judicial Organization, Amos J. Peaslee, Chairman, Clarksboro, New Jersey

Discussion

Reports of Committees:

International Legal Problems Raised by War Conditions, Professor William E. Masterson, Chairman, Philadelphia, Pennsylvania

Comparative Civil and Commercial Law, Guerra Everett, Chairman, Washington, D. C.

Comparative Civil Procedure and Practice, Raymond T. Heilpern, Chairman, New York City

Comparative Public Law, Louis G. Caldwell, Chairman, Washington, D. C.

Comparative Social, Labor and Industrial Legislation, Robert E. Freer, Chairman, Washington, D. C.

International Double Taxation, Mitchell B. Carroll, Chairman, New York City

Unfinished business

New business

Report of Nominating Committee

Election of Officers

JUDICIAL ADMINISTRATION

Monday, August 23

2:00 P.M.

Joint meeting with the Special Committee on Improving the Administration of Justice and the National Conference of Judicial Councils

Honorable Laurance M. Hyde, Chairman of the National Conference of Judicial Councils, presiding

An Administrator for the State Courts, preliminary report by Honorable Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska

Open Forum: Improvement of Judicial Administration Conducted by the Special Committee on Improving the Administration of Justice

Appointment of Nominating Committee

Annual Dinner

7:30 P.M.

Jointly with Section of Criminal Law, National Conference of Judicial Councils and Committee on Improving the Administration of Justice.

Honorable George Rossman, Chairman, Section of Judicial Administration, presiding

Speakers:

Honorable Merrill E. Otis, Judge of the Eighth Circuit Court of Appeals

Honorable Hal. W. Adams, Circuit Judge of Florida

Honorable Robert M. Hutchins, President, University of Chicago

Tuesday, August 24

10:00 A.M.

INSTITUTE ON FEDERAL RULES OF CRIMINAL PROCEDURE
(For detailed program, see page 441)

2:00 P.M.

INSTITUTE ON FEDERAL RULES OF CRIMINAL PROCEDURE (continued)
Report of Nominating Committees
Election of Officers and members of Council of Section of Judicial Administration
Election of Officers of National Conference of Judicial Councils
Unfinished business
Adjournment

JUNIOR BAR CONFERENCE

Saturday, August 21

9:30 A.M. and 2:00 P.M.

Meetings of Officers and Council

Sunday, August 22

9:30 A.M.

Meeting of Officers and Council

12:00 M.

Subscription luncheon for members and their guests
Address by Honorable Floyd E. Thompson

2:00 P.M.

General Session

James P. Economos, Vice Chairman, presiding

Invocation
Address of Welcome by Morris I. Leibman, Chairman, Younger Members Committee of the Chicago Bar Association
Response by Philip H. Lewis, Past Chairman of the Junior Bar Conference and National Director of the Procedural Reform Studies, Topeka, Kansas
Address (speaker to be announced)
Annual Report of the National Chairman, Joseph D. Calhoun, Media, Pennsylvania
Annual Report of the National Secretary, Hubert D. Henry, Denver, Colorado
Report of the Rules Committee
Reports and Recommendations of Committees:
- In the Aid of the Small Litigant, Earl F. Morris, Chairman, Columbus, Ohio
- In Cooperation with the Junior Bar Groups, Hubert D. Henry, Secretary, Junior Bar Conference, Denver, Colorado
- Cooperation with Inter-American Bar Association, Paul M. Strack, Chairman, Newark, New Jersey
- Membership, Eugene Gerhart, Chairman, Newark, New Jersey
- Procedural Reform Studies, Philip H. Lewis, Director in Charge, Topeka, Kansas
- Relations with Law Students, Charles B. Stephens, Chairman, Springfield, Illinois
- Restatement of the Law, R. David Kreitler, Chairman, Philadelphia, Pennsylvania
- Traffic Court, Watson Clay, Chairman, Louisville, Kentucky
- War Readjustment, Lyman M. Tondel, Jr., Chairman, New York City

Public Information Program
Council Recommendations
Announcement of Personnel of Nominating Committee
Report of Committee on Elections

Buffet Supper

8:00 P.M. to 11:00 P.M.

Tendered by junior members of the Chicago and Illinois State Bar Associations to members of the Junior Bar Conference and their ladies
Informal

Monday, August 23

12:30 P.M.

Luncheon

Annual Meeting of Delegates from Junior Bar groups affiliated with the Junior Bar Conference
To be followed immediately by a business session devoted to war readjustment problems of young lawyers, traffic court administration, and legal assistance to the Armed Forces

2:00 P.M.

Open Hearings by Resolutions Committee

4:00 P.M.

Meeting of the Nominating Committee to receive nominations

Tuesday, August 24

9:30 A.M.

Joseph D. Calhoun, Chairman, presiding

Address (speaker to be announced)
Completion of reports and recommendations of committees and other unfinished business from Sunday program
Improving the Administration of Justice by Traffic Courts:
- Report by James P. Economos, Secretary, Traffic Court Committee
- Panel discussion of post-war problems of traffic courts

Report of Resolutions Committee
New Business
Report of the Nominating Committee and nominations from the floor

(Continued on page 464)

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JOVRNAL

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EDITORIAL OFFICE

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Post-War Planning and the Organized Bar

ON other pages of this issue the JOURNAL presents expressions of widely variant views on "Post-War Planning," which it has obtained from representative members of the Association. The opinions expressed are, of course, those of the respective writers.

That title is so broad that here we limit post-war planning to that part of the field in which the organized bar can best work.

The task which now confronts us is the restoration of liberty to a world which has escaped from threatened bondage, so narrowly and at such cost of life and treasure.

We emphasize the activities of the organized bar in this vast field because of certain respects in which the work of the lawyer may be centered on a definite portion of the stupendous task which now confronts the world. No part of this vast field is closed to the lawyer as a citizen or as the adviser of his clients but the lawyer has his greatest usefulness in the field of jurisprudence. With that field he is most familiar and in that field he is especially equipped for helpful effort.

If the formulation of certain general postulates becomes necessary by which, after victory and peace, the nations of the world are to be governed in their relations with one another, the lawyer from the beginning of time has participated in working out the formulation of similar postulates and the lawyer of today knows and can make himself still better informed, as to the history of that branch of the law of nations.

There is now in existence a very simple and informal relationship, called the "United Nations," bound together by the menace of a common danger. Perhaps a more formal tie may sooner or later be found necessary, for when the danger lessens and at last disappears, some future trio of megalomaniacs may plunge the world again into the horrors of a third global war. The creation of such a formal and permanent relationship is within the lawyer's field.

And if it seems that a new form of judicial institution may be required to settle controversies between nations according to principles of justice instead of by force, the lawyer will be looked to, for the special knowledge which he has acquired in the organization of courts of justice and the operation of the judicial process.

Our suggestion is that if bar associations participate in post-war planning they begin their work in one of the many projects which have clear relation to law and jurisprudence in which their members are particularly qualified to serve, and if need be, to lead.

The Ross Prize Essay in 1943

AS its choice of subject for this year's essay in competition for the $3,000 Memorial Prize founded by the late Judge Erskine M. Ross of California, the Board of Governors turned to the vital question of "What Should Be the Function of the States in Our System of Government?" From among the many essays submitted by lawyers and by teachers of law, in all parts of the United States, the committee to read the essays made its recommendation for the award, which the Board of Governors has confirmed. The winning essay will be published in the September issue of the JOURNAL.

This year's recipient of this outstanding prize is Professor Lester Bernhardt Orfield, a native of Minnesota, a well-known teacher of law at the University of Nebraska, lately the senior attorney for the United States Social Security Board, now the Vice Chairman of the Regional War Labor Board at Kansas City. Professor Orfield has been a member of the American Bar Association since 1937, and is now serving as a member of the United States Supreme Court's Advisory Committee on new Rules of Criminal Procedure.

The bestowal of this annual award brings again to mind the wise benefaction for which the Association is indebted to a member who was devoted to its interests during a most worthy career at the bar and on the bench of the United States Circuit Court of Appeals for the Ninth Circuit. Judge Ross believed in the potentialities of the Association as a force for a reasoned and enlightened public opinion on important questions which have constitutional or legal aspects. He made the Association the custodian and administrator of his generous testamentary provision to effectuate annual contributions to the literature and source material of timely issues. His revered memory and his deep affection for the Association are thus annually attested, through this award.

The scholarly discussion which received the acclaim of this year's committee will be found worthy of its place in

(Continued on page 463)

REVIEW OF RECENT SUPREME COURT DECISIONS

By EDGAR BRONSON TOLMAN*

Aliens — Naturalization, Cancellation of Citizenship — Communism — Attachment to Principles of Constitution

A proceeding instituted by the Government to cancel a certificate of citizenship, on the ground that the certificate had been illegally procured, is an action to set aside a judgment. The burden of proof is on the Government to sustain its case by "clear, unequivocal and convincing evidence which does not leave the issue in doubt." Proof of active membership in an American Communistic organization and failure to disclose that fact in the original application for admission to citizenship, is not sufficient to sustain a judgment of cancellation of the earlier judgment granting the original certificate of citizenship.

Schneiderman v. U. S., 87 L. ed. Adv. Ops. 1249; 63 Sup. Ct. Rep. 1333; U. S. Law Week 4502. (No. 2, reargued March 12, 1943, decided June 21, 1943.)

William Schneiderman was born in Russia. He came here in 1907 or 1908 when about three years old. In 1922 at the age of sixteen, in Los Angeles, he became a member of a Communist organization and remained a member until 1929 or 1930. In 1924 he filed his declaration of intent to become a citizen. Soon thereafter he became a member of the "Workers Party," predecessor of the "Communist Party of the United States." January 18, 1927, his petition for naturalization was filed and June 10, 1927, his certificate of citizenship was issued by the United States District Court for the Southern District of California.

June 30, 1939, this proceeding was begun to cancel his certificate of citizenship granted in 1927, on the ground that the certificate had been "illegally procured" and that during the five years preceding his naturalization he "had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States." The complaint also charged fraudulent procurement, in the concealment of the Communist affiliations above referred to, but the Government proceeded in this case, not on the charge of fraud, but upon the charge of illegal procurement.

The district court sustained the Government's petition and entered judgment that the certificate of citizenship be canceled. The Circuit Court of Appeals, Ninth Circuit, affirmed on the ground that the certificate was illegally procured. The Supreme Court granted certiorari and reversed the judgment of both the lower courts.

The opinion of the Court was delivered by Mr. Justice MURPHY. As to the applicable provisions of the Constitution and Acts of Congress, he says:

> When petitioner was naturalized in 1927, the applicable statutes did not proscribe communist beliefs or affiliation as such. They did forbid the naturalization of disbelievers in organized government or members of organizations teaching such disbelief. Polygamists and advocates of political assassination were also barred. Applicants for citizenship were required to take an oath to support the Constitution, to bear true faith and allegiance to the same and the laws of the United States, and to renounce all allegiance to any foreign prince, potentate, state or sovereignty. And, it was to "be made to appear to the satisfaction of the court" of naturalization that immediately preceding the application, the applicant "has resided continuously within the United States five years at least, . . . and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." Whether petitioner satisfied this last requirement is the crucial issue in this case.

Applying these provisions to the facts proved on the hearing Mr. Justice MURPHY says:

> To apply the statutory requirement of attachment correctly to the proof adduced, it is necessary to ascertain its meaning. On its face the statutory criterion is not attachment to the Constitution, but *behavior* for a period of five years as a man attached to its principles and well disposed to the good order and happiness of the United States. Since the normal connotation of behavior is conduct, there is something to be said for the proposition that the 1906 Act created a purely objective qualification, limiting inquiry to an applicant's previous conduct. If this objective standard is the requirement, petitioner satisfied the statute. His conduct has been law abiding in all respects. According to the record he has never been arrested, or connected with any disorder, and not a single written or spoken statement of his, during the relevant period from 1922 to 1927 or thereafter, advocating violent overthrow of the Government, or indeed even a statement, apart from his testimony in this proceeding, that he desired any change in the Constitution has been produced. The sole possible criticism is petitioner's membership and activity in the League and the Party, but those memberships *qua* memberships, were immaterial under the 1906 Act.

The *Schwimmer* and *MacIntosh* cases rendered on a statute prior to the one here controlling were distinguished and it was pointed out that the proceeding under review was a "denaturalization proceeding;" that in such an attack upon a prior judgment the Government "must sustain the heavy burden which then rests upon it to prove lack of attachment by 'clear, unequivocal and convincing' evidence which does not leave the issue in doubt."

The position of the Government is summarized as follows:

> *First*, that he believed in such sweeping changes in the Constitution that he simply could not be attached to it; *Second*, that he believed in and advocated the overthrow by force and violence of the Government, Constitution and laws of the United States.

The Government in support points to the testimony of Schneiderman himself that he subscribed to the principles of certain Communistic organizations and then to certain Party principles and to statements of

*Assisted by JAMES L. HOMIRE.

Party leaders which were said to be at variance with our Constitution.

Developing these points Mr. Justice MURPHY says:

> At this point it is appropriate to mention what will be more fully developed later—that under our traditions beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles. Said to be among those Communist principles in 1927 are: the abolition of private property without compensation; the erection of a new proletarian state upon the ruins of the old bourgeois state; the creation of a dictatorship of the proletariat; denial of political rights to others than members of the Party or of the proletariat; and the creation of a world union of soviet republics. . . .
>
> Those principles and views are not generally accepted—in fact they are distasteful to most of us—and they call for considerable change in our present form of government and society. But we do not think the government has carried its burden of proving by evidence which does not leave the issue in doubt that petitioner was not in fact attached to the principles of the Constitution and well disposed to the good order and happiness of the United States when he was naturalized in 1927.

Approaching the interpretation of the statute under which the proceeding was brought Mr. Justice MURPHY says:

> Our concern is with what Congress meant to be the extent of the area of allowable thought under the statute. By the very generality of the terms employed it is evident that Congress intended an elastic test, one which should not be circumscribed by attempts at precise definition. In view of our tradition of freedom of thought, it is not to be presumed that Congress in the Act of 1906, or its predecessors of 1795 and 1802, intended to offer naturalization only to those whose political views coincide with those considered best by the founders in 1787 or by the majority in this country today. Especially is this so since the language used, posing the general test of "attachment" is not necessarily susceptible of so repressive a construction.

The opinion turns again to its primary thesis that the Government has not proved by "clear, unequivocal, and convincing" evidence that the naturalizing court could not have been satisfied that Schneiderman was attached to the principles of the Constitution when he was naturalized. The following quotations illustrate the treatment of this branch of the discussions:

> The erection of a new proletariat state upon the ruins of the old bourgeois state, and the creation of a dictatorship of the proletariat may be considered together. The concept of the dictatorship of the proletariat is one loosely used, upon which more words than light have been shed. Much argument has been directed as to how it is to be achieved, but we have been offered no precise definition here. In the general sense the term may be taken to describe a state in which the workers or the masses, rather than the bourgeoisie or capitalists are the dominant class. Theoretically it is control by a class, not a dictatorship in the sense of absolute and total rule by one individual. . . . It does not appear that it would necessarily mean the end of representative government or the federal system. . . . The 1928 platform of the Communist Party of the United States . . . advocated the abolition of the Senate, of the Supreme Court, and of the veto power of the President, and replacement of congressional districts with "councils of workers" in which legislative and executive power would be united. These would indeed be significant changes in our present governmental structure—changes which it is safe to say are not desired by the majority of the people in this country—but whatever our personal views, as judges we cannot say that a person who advocates their adoption through peaceful and constitutional means is not in fact attached to the Constitution—those institutions are not enumerated as necessary in the Government's test of "general political philosophy," and it is conceivable that "ordered liberty" could be maintained without them. The Senate has not gone free of criticism and one object of the Seventeenth Amendment was to make it more responsive to the public will. The unicameral legislature is not unknown in the country. It is true that this Court has played a large part in the unfolding of the constitutional plan . . . but we would be arrogant indeed if we presumed that a government of laws, with protection for minority groups, would be impossible without it. Like other agencies of government, this Court at various times in its existence has not escaped the shafts of critics whose sincerity and attachment to the Constitution is beyond question—critics who have accused it of assuming functions of judicial review not intended to be conferred upon it, or of abusing those functions to thwart the popular will, and who have advocated various remedies taking a wide range. And it is hardly conceivable that the consequence of freeing the legislative branch from the restraint of the executive veto would be the end of constitutional government. By this discussion we certainly do not mean to indicate that we would favor such changes. Our preference and aversions have no bearing here. Our concern is with the extent of the allowable area of thought under the statute. We decide only that it is possible to advocate such changes and still be attached to the Constitution within the meaning of the Government's minimum test.
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> Apart from the question whether the alleged principles of the Party which petitioner assertedly believed were so fundamentally opposed to the Constitution that he was not attached to its principles in 1927, the Government contends that petitioner was not attached because he believed in the use of force and violence instead of peaceful democratic methods to achieve his desires. . . .
>
> Apart from his membership in the League and the Party, the record is barren of any conduct or statement on petitioner's part which indicates in the slightest that he believed in and advocated the employment of force and violence, instead of peaceful persuasion, as a means of attaining political ends. To find that he so believed and advocated it is necessary, therefore, to find that such was a principle of the organizations to which he belonged and then impute that principle to him on the basis of his activity in those organizations and his statement that he subscribed to their principles.

The opinion points out and quotes from the political writings of leaders of the Communist Party, the conflict and change displayed in the record and says:

> A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open.

This branch of the discussion closed with the following paragraph:

We conclude that the Government has not carried its burden of proving by "clear, unequivocal, and convincing" evidence which does not leave "the issue in doubt," that petitioner obtained his citizenship illegally. In so holding we do not decide what interpretation of the Party's attitude toward force and violence is the most probable on the basis of the present record, or that petitioner's testimony is acceptable at face value. We hold only that where two interpretations of an organization's program are possible, the one reprehensible and a bar to naturalization and the other permissible, a court in a denaturalization proceeding, assuming that it can reexamine a finding of attachment upon a charge of illegal procurement, is not justified in canceling a certificate of citizenship by imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation. So uncertain a chain of proof does not add up to the requisite "clear, unequivocal, and convincing" evidence for setting aside a naturalization decree. Were the law otherwise, valuable rights would rest upon a slender reed, and the security of the status of our naturalized citizens might depend in considerable degree upon the political temper of majority thought and the stresses of the times. Those are consequences foreign to the best traditions of this nation, and the characteristics of our institutions.

The judgment was reversed and the cause remanded to the circuit court of appeals for further proceedings in conformity with this opinion.

Mr. Justice DOUGLAS filed a concurring opinion in which he says:

I agree with the majority of the Court that petitioner's want of attachment in 1927 to the principles of the Constitution has not been shown by "clear, unequivocal and convincing" evidence. The United States, when it seeks to deprive a person of his American citizenship, carries a heavy burden of showing that he procured it unlawfully. That burden has not been sustained on the present record, as the opinion of the Court makes plain, unless the most extreme views within petitioner's Party are to be imputed or attributed to him and unless all doubts which may exist concerning his beliefs in 1927 are to be resolved against him rather than in his favor.

He points out the difference between the meaning of the two terms used in Section 15 of the Act in question as grounds for cancellation of a certificate of naturalization, "fraud" and "illegal procedure" and cites the cases in which those terms were defined and applied. He declares that Section 15 "makes nothing fraudulent or unlawful that was lawful and honest when it was done." On the other hand he says that a certificate is "illegally procured" as distinguished from fraudulently procured without compliance with a "condition precedent to the authority of the Court to grant petition for naturalization."

In conclusion Mr. Justice DOUGLAS says:

Citizenship can be granted only on the basis of the statutory right which Congress has created. . . . But where it is granted and where all the express statutory conditions precedent are satisfied we should adhere to the view that the judgment of naturalization is final and conclusive except for fraud. Since the United States does not now contend that fraud vitiates this certificate the judgment below must be reversed.

Mr. Justice JACKSON neither concurred nor dissented. He says:

I do not participate in this decision. This case was instituted in June of 1939 and tried in December of that year. In January 1940, I became Attorney General of the United States and succeeded to official responsibility for it. 309 U. S. iii. This I have considered a cause for disqualification, and I desire the reason to be a matter of record.

Mr. Justice RUTLEDGE also filed a concurring opinion. In the opening paragraph he says:

I join in the Court's opinion. I add what follows only to emphasize what I think is at the bottom of this case.

Immediately we are concerned with only one man, William Schneiderman. Actually, though indirectly, the decision affects millions. If, seventeen years after a federal court adjudged him entitled to be a citizen, that judgment can be nullified and he can be stripped of this most precious right, by nothing more than reexamination upon the merits of the very facts the judgment established, no naturalized person's citizenship is or can be secure. If this can be done after that length of time, it can be done after thirty or fifty years. If it can be done for Schneiderman, it can be done for thousands or tens of thousands of others.

After elaborating that thesis and raising but not deciding the many questions therein involved he closes his concurring opinion as follows:

The effect of cancellation is to nullify the judgment of admission. If it is a judgment, and no one disputes that it is, that quality in itself requires the burden of proof the court has held that Congress intended in order to overturn it. That it is a judgment, and one of at least a coordinate court, which the cancellation proceeding attacks and seeks to overthrow, requires this much at least, that solemn decrees may not be lightly overturned and that citizens may not be deprived of their status merely because one judge views their political and other beliefs with a more critical eye or a different slant, however honestly and sincerely, than another. Beyond this we need not go now in decision. But we do not go beyond our function or usurp another tribunal's when we go this far. The danger, implicit in finding too easily the purpose of Congress to denaturalize Communists, is that by doing so the status of all or many other naturalized citizens may be put in jeopardy. The other and underlying questions need not be determined unless or until necessity compels it.

The CHIEF JUSTICE filed a dissenting opinion in which Mr. Justice ROBERTS and Mr. Justice FRANKFURTER joined. Opening his opinion the CHIEF JUSTICE says:

The two courts below have found that petitioner, at the time he was naturalized, belonged to Communist Party organizations which were opposed to the principles of the Constitution, and which advised, advocated and taught the overthrow of the Government by force and violence. They have found that petitioner believed in and supported the principles of those organizations. They have found also that petitioner "was not, at the time of his naturalization . . . , and during the period of five years immediately preceding the filing of his petition for naturalization had not behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same."

• • •

It is important to emphasize that the question for decision is much simpler than it has been made to appear. It is whether petitioner, in securing his citizenship by naturalization, has fulfilled a condition which Congress has imposed on every applicant for naturalization—that during the five years preceding his application "he has behaved as a man . . . attached to the principles of the Constitution of

the United States, and well disposed to the good order and happiness of the same." Decision whether he was lawfully entitled to the citizenship which he procured, and consequently whether he is now entitled to retain it, must turn on the existence of his attachment to the principles of the Constitution when he applied for citizenship, and that must be inferred by the trier of fact from his conduct during the five-year period. We must decide not whether the district court was compelled to find want of attachment, but whether the record warrants such a finding.

The question then is not of petitioner's opinions or beliefs—save as they may have influenced or may explain his conduct showing attachment, or want of it, to the principles of the Constitution. It is not a question of freedom of thought, of speech or of opinion, or of present imminent danger to the United States from our acceptance as citizens of those who are not attached to the principles of our form of government. The case obviously has nothing to do with our relations with Russia, where petitioner was born, or with our past or present views of the Russian political or social system. The United States has the same interest as other nations in demanding of those who seek its citizenship some measure of attachment to its institutions. Our concern is only that the declared will of Congress shall prevail—that no man shall become a citizen or retain his citizenship whose behavior for five years before his application does not show attachment to the principles of the Constitution.

* * *

The present suit by the United States, to cancel petitioner's previously granted certificate of citizenship, was brought pursuant to an Act of Congress . . . enacted long prior to petitioner's naturalization. Section 15 authorizes any court by a suit instituted by the United States Attorney to set aside a certificate of naturalization "on the ground of fraud or on the ground that such certificate of citizenship was illegally procured." Until now this Court, without a dissenting voice, has many times held that in a suit under this statute it is the duty of the court to render a judgment cancelling the certificate of naturalization if the court finds upon evidence that the applicant did not satisfy the conditions which Congress had made prerequisite to the award of citizenship. . . .

Provision for such a review of the judgment awarding citizenship is within the legislative power of Congress and plainly is subject to no constitutional infirmity, . . . especially where, as here, the statute antedated petitioner's citizenship and the review was thus a condition of its award.

* * *

To meet the exigencies of this case, it is now for the first time proposed by the concurring opinion of Mr. Justice Douglas that a new construction be given to the statute which would preclude any inquiry concerning the fact of petitioner's attachment to the Constitution. It is said that in a § 15 proceeding the only inquiry permitted, apart from fraud, is as to the regularity of the naturalization proceedings on their face; that—however much petitioner fell short of meeting the statutory requirements for citizenship—if he filed, as he did, pro forma affidavits of two persons, barely stating that he met the statutory requirements of residence, moral character and attachment to the Constitution, and if the court on the basis of the affidavits made the requisite findings and order, then all further inquiry is foreclosed.

To this easy proposal for the emasculation of the statute there are several plain and obvious answers.

* * *

It would seem passing strange that Congress—which authorized cancellation of citizenship under § 15 for failure to hold the naturalization hearing in open court instead of in the judge's chambers . . . or for failure to present the requisite certificate of arrival in this country . . . should be thought less concerned with the applicant's attachment to the principles of the Constitution and that he be well disposed to the good order and happiness of the United States. . . .

Moreover, if in the absence of fraud the finding of the naturalization court in this case is final and hence beyond the reach of a § 15 proceeding, it would be equally final in the case of a finding, contrary to the actual fact, that the applicant had been for five years a continuous resident in the United States, since that requirement too is set forth in the sentence of § 4 which provides that "it shall be made to appear to the satisfaction of the court." Yet it is settled that a certificate of citizenship based on a mistaken finding of five years residence is subject to revocation.

Having made clear the position which he takes, the CHIEF JUSTICE examines and analyzes many of the former decisions of the Court and interprets the applicable statutes, and summarizes the purpose of the various Acts of Congress as follows:

> The prescribed conditions for the award of citizenship by naturalization are few and readily understood, and we must accept them as the expression of the Congressional judgment that aliens not satisfying those requirements are not worthy to be admitted to the privilege of citizenship. Congress has declared that before one is entitled to the privilege he must take the oath of allegiance "that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." Act of June 29, 1906, § 4 (Third), 34 Stat. 597. And as I have said, the applicant must make it appear to the court admitting him to citizenship that for the five years preceding the date of his application he has resided continuously within the United States and "that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."

The CHIEF JUSTICE next takes up the personal history of Schneiderman, his activities in the two Communist organizations with which he had been connected, the part he played in communistic propaganda and his beliefs as stated by himself in his testimony. He also examines the record as to the tenets of Communism. Those principles and Schneiderman's adherence to the communistic tenets are laid alongside the principles declared by the Constitution of the United States and the CHIEF JUSTICE concludes his dissenting opinion as follows:

> Petitioner's pledge of adherence to Communist Party principles and tactics, and his membership in the Communist organizations, were neither passive nor indolent. His testimony shows clearly that during the crucial years he was a young man of vigorous intellect and strong convictions. He spent his time actively arranging for the dissemination of a gospel of which he never has asserted either ignorance or disbelief. His wide acquaintance with Party literature, and his zealous promotion of Party interests for many years, preclude the supposition that he did not know the character of its teachings and did not aid in their advocacy. They are persuasive that he was without attachment to the constitutional principles which those teachings aimed to destroy. Yet the Court's opinion seems to tell us that the

trier of fact must not examine petitioner's gospel to find out what kind of man he was, or even what his gospel was; that the trier of fact could not "impute" to petitioner any genuine attachment to the doctrines of these organizations whose teachings he so assiduously spread. It might as well be said that it is impossible to infer that a man is attached to the principles of a religious movement from the fact that he conducts its prayer meetings, or, to take a more sinister example, that it could not be inferred that a man is a Nazi and consequently not attached to constitutional principles who, for more than five years, had diligently circulated the doctrines of *Mein Kampf*.

In neither case of course is the inference inevitable. It is possible, though not probable or normal, for one to be attached to principles diametrically opposed to those, to the dissemination of which he has given his life's best effort. But it is a normal and sensible inference which the trier of fact is free to make that his attachment is to those principles rather than to constitutional principles with which they are at war. A man can be known by the ideas he spreads as well as by the company he keeps. And when one does not challenge the proof that he has given his life to spreading a particular class of well-defined ideas, it is convincing evidence that his attachment is to them rather than their opposites. In this case it is convincing evidence that petitioner, at the time of his naturalization, was not entitled to the citizenship he procured because he was not attached to the principles of the Constitution of the United States and because he was not well disposed to the good order and happiness of the same.

The case was reargued by Mr. Wendell L. Willkie for Schneiderman and by Mr. Solicitor General Fahy for the U. S.

Constitutional Law—War Power of the United States—Validity of Japanese Curfew Proclamation

In the exercise of the war powers of the United States, Congress and the President have constitutional authority to impose a curfew on citizens of alien enemy ancestry. In the exercise of that power, they may leave it to military commanders in charge of various areas to determine the time and place for the promulgation of the curfew, and to determine whether the curfew is appropriate to protect national defense installations against espionage and sabotage.

In view of the national emergency and the impracticability of prompt segregation of loyal citizens of Japanese ancestry, a curfew requiring all citizens of Japanese ancestry, in certain areas as defined by the military commander, to remain in their residences between 8 p.m. and 6 a.m. is a valid regulation and is not in conflict with the Fifth Amendment.

Gordon Kiyoshi Hirabayashi v. The United States of America, 87 L. ed. Adv. Ops. 1337; 63 Sup. Ct. Rep. 1375; U. S. Law Week 4539. (No. 870, argued May 10 and 11, 1943, decided June 21, 1943.)

In this case the Supreme Court passes upon the validity of the military curfew as applied to citizens of Japanese ancestry within designated military areas. The appellant, Hirabayashi, was indicted on two counts. By the first he was charged with failing to report to the Civil Control Station in violation of the Civil Exclusion Order issued by the military commander. By the second count he was charged with failing to remain in his residence within the designated military area during the curfew, that is, between 8 p.m. and 6 a.m.

By demurrer and plea in abatement the appellant sought dismissal of the indictment on the grounds that he was an American born citizen of the United States, had never been a subject of or sworn allegiance to Japan and also that the Act of March 21, 1942 was an unconstitutional delegation of legislative power. At the trial it appeared that the appellant was born in Seattle in 1918 of Japanese parents who came from Japan but who had not returned to Japan thereafter; that he was educated in the Washington public schools and was a senior at the University of Washington when arrested; and that he had never been in Japan or had any association with Japanese residing there. The evidence showed and the jury found that the appellant was guilty of being away from his place of residence after 8 p.m. on May 9, 1942. He was also found guilty on the other count and was sentenced to prison for three months on each count, the sentences to run concurrently.

On appeal to the circuit court of appeals, it certified questions to the Supreme Court for answer. The Supreme Court directed that the whole record be sent to it for determination of the issues, as if on an appeal. Upon consideration of the record, the conviction was affirmed on the curfew violation charge, in an opinion by the CHIEF JUSTICE. In view of the concurrent terms of imprisonment of equal length, the Court, sustaining the charge of curfew violation, finds it unnecessary to pass on the other charge.

The question for decision was not one of power to delegate legislative power to the President, but whether, acting in cooperation, Congress and the Executive have constitutional authority to impose the curfew; and secondly, whether they could leave it to a designated military commander to appraise the conditions and to determine the time and place for the promulgation of the curfew order and whether the order itself was appropriate to protect against espionage and sabotage to national defense materials, premises and utilities. The Court's conclusion is that Congress and the Executive have constitutional authority to impose a curfew and that they could properly leave it, as they did, to the military commander to determine the circumstances, time and place appropriate for its application. The broad powers of the Government to wage war and the wide discretion of Congress and the Executive in the exercise of those powers are alluded to in the following portion of the opinion:

> The war power of the national government is "the power to wage war successfully". . . . It extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution and progress of war. . . . Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it. . . . Where, as they did here, the conditions call for the

exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.

As a substantial basis for the conclusion that the curfew was a necessary measure to meet sabotage and espionage, the opinion recites the rapid and extensive military and naval successes of Japan following the attack upon Pearl Harbor and refers to the social, economic and political conditions affecting the Japanese population on the West Coast. In this connection the CHIEF JUSTICE says:

> Viewing these data in all their aspects, Congress and the Executive could reasonably have concluded that these conditions have encouraged the continued attachment of members of this group to Japan and Japanese institutions. These are only some of the many considerations which those charged with the responsibility for the national defense could take into account in determining the nature and extent of the danger of espionage and sabotage, in the event of invasion or air raid attack. The extent of that danger could be definitely known only after the event and after it was too late to meet it. Whatever views we may entertain regarding the loyalty to this country of the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it.

The opinion then considers the contention that the curfew violated the Fifth Amendment because it discriminates against citizens of Japanese ancestry. In dealing with this contention, it is observed that the Fifth Amendment contains no equal protection clause and that it restrains only such discriminatory legislation by Congress as amounts to a denial of due process. Distinctions between citizens on the basis of ancestry, though offensive under ordinary circumstances, may be taken into account when they are relevant to national defense and to the successful prosecution of war. In supporting the challenged curfew regulations, the CHIEF JUSTICE says:

> Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection. . . . We may assume that these considerations would be controlling here were it not for the fact that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of population in the danger areas. Because racial discriminations are in most circumstances irrelevant and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly precluded from taking into account those facts and circumstances which are relevant to measures for our national defense and for the successful prosecution of the war, and which may in fact place citizens of one ancestry in a different category from others. "We must never forget, that it is *a constitution* we are expounding," "a constitution intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs." *McCulloch* v. *Maryland*, 4 Wheat. 316, 407, 415. The adoption by Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution and is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant.
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> Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulgation, the challenged orders and statute afforded a reasonable basis for the action taken in imposing the curfew. We cannot close our eyes to the fact, demonstrated by experience, that in time of war residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry. Nor can we deny that Congress, and the military authorities acting with its authorization, have constitutional power to appraise the danger in the light of facts of public notoriety. We need not now attempt to define the ultimate boundaries of the war power. We decide only the issue as we have defined it—we decide only that the curfew order as applied, and at the time it was applied, was within the boundaries of the war power. In this case it is enough that circumstances within the knowledge of those charged with the responsibility for maintaining the national defense afforded a rational basis for the decision which they made. Whether we would have made it is irrelevant.

In conclusion the Court also discusses the basis for the Proclamations of the military commander and finds that they were supported by the existing facts and conformed to the standards approved by Congress and the President.

Mr. Justice DOUGLAS, Mr. Justice MURPHY and Mr. Justice RUTLEDGE each delivered separate concurring opinions.

Mr. Justice DOUGLAS emphasizes that the present decision goes upon a narrow ground and stresses the fact that here the appellant had no constitutional right to defy the curfew law. However, Mr. Justice DOUGLAS emphasizes that questions are reserved as to the right of persons affected by the regulations to obtain relief by other remedies.

Mr. Justice MURPHY in his concurrence declares that the present sanction of discrimination between groups of citizens on the basis of ancestry "goes to the very brink of constitutional power."

Mr. Justice RUTLEDGE expresses concurrence with the opinion of the Court except to the extent that it intimates that the courts have no power to review any action a military officer may find it necessary, in his discretion, to take with respect to civilian citizens in military zones, once it is found that an emergency exists justifying the creation of the area and the institution of some degree of military control short of suspension of habeas corpus. He reserves judgment as to that.

The case was argued by Mr. Frank L. Walters and Mr. Harold Evans for Hirabayashi and by Mr. Solicitor General Fahy for the United States.

Yasui v. United States, 87 L. ed. Adv. Ops. 1354; 63 Sup. Ct. Rep. 1392; U. S. Law Week 4547. (No. 871, decided June 21, 1943, is a companion case to No. 870.)

The trial court had rested its decision on the ground that by reason of his course of conduct in violating the curfew, in order to test its constitutionality, Yasui, an American citizen of Japanese ancestry, had forfeited his citizenship. The Government did not undertake to support the conviction on that ground. The Supreme Court in an opinion by the CHIEF JUSTICE, sustains the conviction on the grounds set forth in the *Hirabayashi* case. The judgment was vacated, however, to permit a resentence of the defendant and to enable the trial court to strike its findings as to loss of citizenship.

The case was argued by Mr. E. F. Bernard and Mr. A. L. Wirin for Yasui and by Mr. Solicitor General Fahy for the United States.

State Statutes

The Mississippi statute of March 20, 1942, to prohibit acts detrimental to public peace and safety, does not justify the public expression of views and opinions respecting government policies and prophecies concerning the future of our own and other nations. The evidence failed to prove that the expression of belief and opinion concerning domestic measures and trends in national and world affairs were made with an evil or sinister purpose or advocated or incited subversive action against the nation or the state.

Taylor v. *Mississippi; Benoit* v. *same; Cummings* v. *same*, 87 L. ed. Adv. Ops. 1195; 63 Sup. Ct. Rep. 1200; U. S. Law Week 4497. (Nos. 826, 827 and 828, argued April 15 and 16, 1943, decided June 14, 1943.)

March 20, 1942, Mississippi enacted a statute the title of which declares that it is intended to secure the peace and safety of the United States and of the State of Mississippi during war and to prohibit acts detrimental to public peace and safety. The first section provides:

> That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or his state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the State of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Soon thereafter three persons were severally indicted for various offenses against that Act, found guilty and sentenced to fine and imprisonment. Each of the accused was a member of "Jehovah's Witnesses."

Appeals were perfected to the Supreme Court of Mississippi which, by an evenly divided court, affirmed the convictions. Appeals were taken to the Supreme Court of the United States and it was there asserted, as asserted below, that their convictions denied them the rights guaranteed by the Fourteenth and First Amendments, in that, as construed and applied to them, the Act challenges freedom of press and of speech and is so vague as to furnish no reasonably ascertainable standard of guilt.

In No. 826, the prosecution offered evidence to show that Taylor in interviews with several women stated that it was wrong for our President to send our boys across in uniform to fight our enemies, that Hitler would rule but would not have to come here to rule. Books and pamphlets distributed by Taylor were placed in evidence, are set out in the margin in the opinion of the Court but are not here reproduced because of their inordinate length.

In No. 827, the *Benoit* case, the charge was the teaching and dissemination of printed material designed and calculated to encourage disloyalty to the national and state governments and repeated refusal to honor or respect the flag or government of the nation or the state.

In No. 828, the *Cummings* case, the accused distributed a book which made no specific reference to the prosecution of war but which implied the flag was a symbol of idolatry.

The Supreme Court of the United States reversed the judgments. The opinion of the Court was delivered by Mr. Justice ROBERTS. After citing the recent decision in the *Barnette* case (No. 591 of the present term) Mr. Justice ROBERTS says:

> Inasmuch as Betty Benoit was charged only with disseminating literature reasonably tending to create an attitude of stubborn refusal to salute, honor, or respect the national and state flag and government, her conviction denies her the liberty guaranteed by the Fourteenth Amendment. Her conviction and the convictions of Taylor and Cummings, for advocating and teaching refusal to salute the flag, cannot be sustained.
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> The last mentioned appellants were also charged with oral teachings and the dissemination of literature calculated to encourage disloyalty to the state and national governments. Their convictions on this charge must also be set aside.
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> The statute as construed in these cases makes it a criminal offense to communicate to others views and opinions respecting governmental policies, and prophesies concerning the future of our own and other nations. As applied to the appellants it punishes them although what they communicated is not claimed or shown to have been done with an evil or sinister purpose, to have advocated or incited subversive action against the nation or state, or to have threatened any clear and present danger to our institutions or our government. What these appellants communicated were their beliefs and opinions concerning domestic measures and trends in national and world affairs.

Under our decisions criminal sanctions cannot be imposed for such communication.

The cases were argued by Mr. Hayden C. Covington for Taylor et al. and by Mr. George H. Ethridge for the State of Mississippi.

State Police Power—Public Schools—State Control of Education—Religious Liberty

The police power of a state does not extend to the power to compel pupils against their will and as a part of the ritual of the conduct of schools to join in a salute to the flag of the United States where refusal is based upon an honest belief in the tenets of a religious cult. The power of the state to conduct and direct its educational system must yield to the right to liberty of opinion based upon religious belief.

West Virginia State Board of Education v. *Barnette et al.*, 87 L. ed. Adv. Ops. 1171; 63 Sup. Ct. Rep. 1178; U. S. Law Week 4472. (No. 591, argued March 11, 1943, decided June 14, 1943.)

Following the decision of the Supreme Court on June 3, 1940, in *Minersville School District* v. *Gobitis*, 310 U. S. 586, the West Virginia legislature amended its statutes so as to require all schools therein to conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the state "for the purpose of fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government."

Appellant Board of Education, on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's *Gobitis* opinion and ordered that the salute to the flag become a regular part of the program of activities in the public schools, that all teachers and pupils "shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly."

Insubordination by failure to conform to that rule is dealt with by expulsion. Readmission is denied by a statute until compliance. Meanwhile the expelled child is "unlawfully absent" and may be proceeded against as a delinquent. His parents or guardians are liable to prosecution and if convicted are subject to a fine not exceeding $50 and jail term not exceeding thirty days.

Barnette and two others brought suit in the United States district court for themselves and others similarly situated, seeking an injunction to restrain enforcement of these laws and regulations against Jehovah's Witnesses. The Witnesses are an unincorporated body teaching that obligation imposed by the law of God is superior to the laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, 20: 4, 5, which says: "Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them." They consider that the flag is an "image" within this command. For this reason they refuse to salute it.

Children of that faith have been expelled from school and are threatened with exclusion for no other cause. Parents have been prosecuted and threatened with prosecution for causing delinquency.

The Board of Education moved to dismiss the complaint setting forth these facts and alleging that the law and regulations are an unconstitutional denial of religious freedom, and of freedom of speech, and are invalid under the "due process" and "equal protection" clauses of the Fourteenth Amendment of the federal Constitution. The case was submitted on the pleadings to a district court of three judges. It restrained enforcement as to the plaintiffs and those of that class. The Board of Education took the case up by direct appeal under § 266 of the Judicial Code, 28 U. S. C. 380.

The Supreme Court affirmed that judgment. The opinion of the Court was delivered by Mr. Justice JACKSON. After stating the record facts in brief compass Mr. Justice JACKSON says:

> This case calls upon us to reconsider a precedent decision, as the Court throughout its history often has been required to do. Before turning to the *Gobitis* case, however, it is desirable to notice certain characteristics by which this controversy is distinguished.
>
> The freedom asserted by these respondents does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the state to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behavior is peaceable and orderly. The sole conflict is between authority and rights of the individual. The state asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touch individual opinion and personal attitude.

The opinion reviews the history of the *Gobitis* case and the application thereto of the Bill of Rights, the First Amendment and the Fourteenth Amendment; takes up, seriatim, some of the conclusions reached in the *Gobitis* case, and restates the position of the Court in relation thereto. The first of these particulars is discussed as follows:

> 1. It was said that the flag-salute controversy confronted the Court with "the problem which Lincoln cast in memorable dilemma: 'Must a government of necessity be too *strong* for the liberties of its people, or too *weak* to maintain its own existence?' " and that the answer must be in favor of strength. . . .
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> We think these issues may be examined free of pressure or restraint growing out of such considerations.
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> Without promise of a limiting Bill of Rights it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.

> The subject now before us exemplifies this principle. Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or failing that, to weaken the influence of the educational system. Observance of the limitations of the Constitution will not weaken government in the field appropriate for its exercise.

The second point considered in the *Gobitis* case was that the functions of educational officers in states, counties and school districts were such that to interfere with that authority would in effect make the Supreme Court the school board for the country. On this point Mr. Justice JACKSON says:

> The Fourteenth Amendment, as now applied to the states, protects the citizen against the state itself and all of its creatures—boards of education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

The third point in the *Gobitis* opinion here reviewed was the statement that "where courts possess no marked and certainly no controlling competence," it is committed to the legislature as well as the courts to guard cherished liberties, and that it is constitutionally appropriate to "fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies rather than to transfer the contest to the judicial arena" since all the effective means of inducing political changes are left free. On this point Mr. Justice JACKSON says:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's rights to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.
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> In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. . . . It is important to note that while it is the Fourteenth Amendment which bears directly upon the state it is the more specific limiting principles of the First Amendment that finally govern this case.

The fourth and last point, declared to be "the very heart of the *Gobitis* opinion", involved that part of that opinion which reasons that "National unity is the basis of national security," that the authorities have "the right to select appropriate means for its attainment" and that therefore compulsory measures toward "national unity" are constitutional, and it is said that "upon the verity of this assumption depends our answer in this case." Here Mr. Justice JACKSON says:

> National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.
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> It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the state or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.
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> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.
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> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.
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> The decision of this Court in *Minersville School District* v. *Gobitis* and the holdings of those few *per curiam* decisions which preceded and foreshadowed it are overruled, and the judgment enjoining enforcement of the West Virginia Regulation is affirmed.

Mr. Justice ROBERTS and Mr. Justice REED adhere to the views expressed by the Court in *Minersville School District* v. *Gobitis* and are of opinion that the judgment below should be reversed.

Mr. Justice BLACK and Mr. Justice DOUGLAS joined in a concurring opinion in which it is said:

> We are substantially in agreement with the opinion just read, but since we originally joined with the Court in the *Gobitis* case, it is appropriate that we make a brief statement of reasons for our change of view.
>
> Reluctance to make the Federal Constitution a rigid bar against state regulation of conduct thought inimical to the public welfare was the controlling influence which moved us to consent to the *Gobitis* decision. Long reflection convinced us that although the principle is sound, its application in the particular case was wrong. . . .
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> Neither our domestic tranquility in peace nor our martial effort in war depends on compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation. If, as we think, their fears are groundless, time and reason are the proper antidotes for their errors. The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose.

Mr. Justice MURPHY also filed a concurring opinion, in which he says:

> A reluctance to interfere with considered state action, the fact that the end sought is a desirable one, the emotion aroused by the flag as a symbol for which we have fought

and are now fighting again,—all of these are understandable. But there is before us the right of freedom to believe, freedom to worship one's Maker according to the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.

• • •

Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words wrung from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.

Mr. Justice FRANKFURTER filed a dissenting opinion in which he says:

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and action of a lifetime.

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In the light of all the circumstances, including the history of this question in this Court, it would require more daring than I possess to deny that reasonable legislators could have taken the action which is before us for review. Most unwillingly, therefore, I must differ from my brethren with regard to legislation like this. I cannot bring my mind to believe that the "liberty" secured by the Due Process Clause gives this Court authority to deny to the State of West Virginia the attainment of that which we all recognize as a legitimate legislative end, namely, the promotion of good citizenship by employment of the means here chosen.

• • •

When Mr. Justice Holmes, speaking for this Court, wrote that "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts", *Missouri, Kansas & Texas Ry. Co.* v. *May*, 194 U. S. 267, 270, he went to the very essence of our constitutional system and the democratic conception of our society.

• • •

We are not reviewing merely the action of a local school board. The flag salute requirement in this case comes before us with the full authority of the State of West Virginia. We are in fact passing judgment on "the power of the state as a whole". . . .

Conscentious scruples, all would admit, cannot stand against every legislative compulsion to do positive acts in conflict with such scruples. We have been told that such compulsions override religious scruples only as to major concerns of the state. But the determination of what is major and what is minor itself raises questions of policy.

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The constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.

• • •

The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state's support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organizations or beliefs may pronounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the state on any matter deemed within the sovereignty of the religious conscience. Much that is the concern of temporal authority affects the spiritual interests of men.

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It is self-delusive to believe that the liberal spirit can be enforced by judicial invalidation of illiberal legislation. Our constant preoccupation with the constitutionality of legislation rather than with its wisdom tends to preoccupation of the American mind with a false value. The tendency of focussing attention on constitutionality is to make constitutionality synonymous with wisdom, to regard a law as all right if it is constitutional. Such an attitude is a great enemy of liberalism. Particularly in legislation affecting freedom of thought and freedom of speech much which should offend a free-spirited society is constitutional. Reliance for the most precious interests of civilization, therefore, must be found outside of their vindication in courts of law.

The case was argued by Mr. W. Holt Wooddell for the State Board of Education and by Mr. Hayden C. Covington for Barnette et al.

Due Process of Law—Restraints on Religious Liberty—Licensing Requirements in Connection with Sale on Public Streets of Religious Literature

David Busey et al. v. District of Columbia, 87 L. ed. Adv. Ops. 1199; 63 Sup. Ct. Rep. 1277; U. S. Law Week 4499. (No. 235, argued June 1, 1943, decided June 14, 1943.)

Petitioners, Jehovah's Witnesses, were convicted of selling, on the streets of the District of Columbia, magazines to expound their religious views without procuring the license or paying the tax required by a provision of the District of Columbia Code. The court of appeals for the District affirmed the conviction, holding the statute applicable and sustaining its constitutionality. In view of the ruling in the *Opelika* case, 316 U. S. 584, holding the license tax in that case to be unconstitutional, the Supreme Court in a *per curiam* opinion vacated the judgment and remanded the cause to permit the court of appeals to reexamine its rulings on the construction and validity of the District ordinance in the light of *Jones vs. Opelika*, 318 U. S. — and *Murdock v. Pennsylvania*, 318 U. S. —.

Mr. Justice RUTLEDGE did not participate.

The case was argued by Mr. Hayden C. Covington for Busey et al. and by Mr. Vernon E. West for the District.

Federal Statutes—The Federal Firearms Act—Evidence—Presumptions

That provision of the Federal Firearms Act which attempts to make possession of a firearm or ammunition, by one who has been convicted of a crime of violence or who is a fugitive from justice, presumptive evidence that the firearm or ammunition was

shipped or transported or received in interstate or foreign commerce, is invalid.

Tot v. U. S. and *U. S. v. Delia,* 87 L. ed. Adv. Ops. 1119; 63 Sup. Ct. Rep. 1241; U. S. Law Week 4462. (Nos. 569 and 636, argued April 5 and 6, 1943, decided June 7, 1943.)

Section 2 (f) of the Federal Firearms Act makes it "unlawful for any person who has been convicted of a crime of violence . . . to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." The Act also declares that "possession of a firearm or ammunition by any such person shall be presumptive evidence" of violation of the Act.

In No. 569 the evidence was undisputed that Tot had twice been convicted of crimes of violence and that on September 22, 1938, he was found in possession of a loaded automatic. Tot testified in his own behalf that he purchased the pistol in 1933 or 1934 (before the passage of the law). His sister and his wife testified in corroboration of his evidence but it is said that "their testimony was shaken on cross-examination." He was convicted and the circuit court of appeals affirmed the judgment.

In No. 636 Delia was convicted on proof of a crime of violence (burglary), and possession of a loaded revolver shipped in interstate commerce and ammunition shipped in foreign commerce. Delia testified that he picked up the pistol when it was dropped by a person who attacked him, shortly before his arrest. The Circuit Court of Appeals for the Sixth Circuit reversed the conviction. Certiorari was granted in both cases and they were decided in one opinion.

Both circuit courts held that the offense created by the Act is confined to the receipt of firearms or ammunition as a part of interstate transportation and does not extend to the receipt, in an interstate transaction, which, at some prior time, had been transported interstate, and the Government agreed that this construction is correct.

The opinion of the Court was delivered by Mr. Justice ROBERTS. After stating the record facts briefly set forth above, he says:

> There remains for decision the question of the power of Congress to create the presumption which § 2 (f) declares, namely, that, from the prisoner's prior conviction of a crime of violence and his present possession of a firearm or ammunition, it shall be presumed (1) that the article was received by him in interstate or foreign commerce, and (2) that such receipt occurred subsequent to July 30, 1938, the effective date of the statute.
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> Proof of some sort on the part of the prosecutor is requisite to a finding of guilt; it may consist of testimony of those who witnessed the defendant's conduct.
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> The jury is permitted to infer from one fact the existence of another essential to guilt, if reason and experience support the inference. In many circumstances courts hold that proof of the first fact furnishes a basis for inference of the existence of the second.
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> The rules of evidence, however, are established not alone by the courts but by the legislature. The Congress has power to prescribe what evidence is to be received in the courts of the United States. The section under consideration is such legislation. But the due process clauses of the Fifth and Fourteenth Amendments set limits upon the power of Congress or that of a state legislature to make the proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated. The question is whether, in this instance, the Act transgresses those limits.
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> The Government seems to argue that there are two alternative tests of the validity of a presumption created by statute. The first is that there be a rational connection between the facts proved and the fact presumed; the second that of comparative convenience of producing evidence of the ultimate fact. We are of opinion that these are not independent tests but that the first is controlling and the second but a corollary. Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts.

The opinion then considers other contentions of the Government in support of the statutory presumption. One of those was that most of the states forbid the acquisition of firearms without registration of ownership, and that therefore the probabilities point to the conclusion that the accused in these cases acquired their firearms through an interstate transaction. Mr. Justice ROBERTS rejects that contention, saying:

> Aside from the fact that a number of states have no such laws, there is no presumption that a firearm must have been lawfully acquired or that it was not transferred interstate prior to the adoption of state regulations. . . .

Another contention was that the defendant has the better means of information. In rejecting that contention Mr. Justice ROBERTS says:

> In every criminal case the defendant has at least an equal familiarity with the facts and in most a greater familiarity with them than the prosecution. It might, therefore, be argued that to place upon all defendants in criminal cases the burden of going forward with the evidence would be proper. But the argument proves too much. . . .

As to the argument from convenience it is said:

> The argument from convenience is admissible only where the inference is a permissible one, where the defendant has more convenient access to the proof, and where requiring him to go forward with proof will not subject him to unfairness or hardship. Even if the presumption in question were in itself reasonable, we think that the nature of the offense, and the elements which go to constitute it, render it impossible to sustain the statute, for the reason that one element of the offense is the prior conviction of a crime of violence.
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> The judgment in No. 569 is reversed and that in No. 636 is affirmed.
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> Mr. Justice MURPHY took no part in the consideration or decision of these cases.

Mr. Justice BLACK filed a concurring opinion in which Mr. Justice DOUGLAS joined.

The cases were argued by Mr. George R. Sommer for Tot, and by Mr. Assistant Attorney General Berge for the United States; and by Mr. Jack N. Tucker and Mr. Morton A. Eden for Delia.

Criminal Law—Attempts to Evade Income Tax—Conspiracy

An order permitting a grand jury, upon its request, "to finish investigations begun but not finished" in the December 1939 and February 1940 terms of court is "at worst, dubious as to what was begun and what was finished." The ambiguity should have been solved by reading those words as qualifying "finished" rather than "begun."

U. S. v. *Johnson; U. S.* v. *Sommers*, 87, L. ed. Adv. Ops. 1109; 63 Sup. Ct. Rep. 1233; U. S. Law Week 4451. (Nos. 4 and 5, argued October 12, 1942, decided June 7, 1943.)

Johnson was charged in four counts of an indictment with fraudulently attempting to escape federal income taxation and twelve others were charged with aiding and abetting his efforts. The fifth count charged Johnson and the others with conspiring to defraud the income tax. As to four of the defendants the case was dismissed on motion of the United States Attorney; three others were acquitted by the jury; the jury brought in a verdict of guilty on all counts as to five and a verdict of guilty on two counts as to one defendant.

The district court sentenced Johnson to five years' imprisonment on the first four counts, two years on the conspiracy count, and a fine of $10,000 on each of the five counts. The terms of imprisonment were to run concurrently and the payment of $10,000 would discharge all fines. Lesser sentences and fines were imposed on the other defendants.

The circuit court of appeals reversed the judgments. It held the indictment void because returned by an illegally constituted grand jury. It held the four substantive counts "fatally defective." Proceeding to the merits it held that the case "properly went to the jury against Johnson on the last four counts . . . but that a verdict should have been directed for Johnson on the first count and for the other defendants on all but the conspiracy count." Judge Evans dissented on all points.

The case was brought to the Supreme Court by certiorari, because it concerns "serious aspects of federal criminal justice." The judgment of the court of appeals was reversed.

The opinion of the Court was delivered by Mr. Justice FRANKFURTER. As to the holding of the circuit court of appeals he says:

> Inasmuch as the initiation of prosecution through grand juries forms a vital feature of the federal system of criminal justice, the law governing its procedures and the appropriate considerations for determining the legality of its actions are matters of first importance. Therefore, in deciding that the defendants were held to answer for an infamous crime on what was merely a scrap of paper and not "the indictment of the Grand Jury" as required by the Fifth Amendment, the lower court went beyond that which relates to the special circumstances of a particular case. Unlike most of the other rulings below, the court here dealt with a matter of deep concern to the administration of federal criminal law. . . .

It appears from the opinion that the grand jury had requested that it be authorized to continue its sittings during the March term "to finish investigations begun but not finished during the . . . December 1939 and the . . . February 1940 Terms of this Court, and which . . . cannot be finished during the . . . February 1940 Term of Court." The opinion says that the circuit court "read this to mean that the grand jury requested a continuance into the March term to finish investigations begun in the February as well as in the original December term." That language is declared to be "at the worst, dubious as to what was begun and what was finished." Judge Evans' solution of the ambiguity, by reading the disputed language "during the . . . December 1939 and . . . February 1940 Terms" as qualifying "finished" rather than "begun," was approved and declared to make "good English as well as good sense," and the opinion says:

> Every district judge in a grand metropolitan center like Chicago knows that in authorizing a grand jury to continue to sit "for the purpose of finishing" their "investigations," the "investigations" must have been begun during the grand jury's original term and that new domains of inquiry may not thereafter be entered by the grand jury.

The opinion next takes up the "subsidiary argument" of the circuit court in regard to the fourth count of the indictment, which charged an attempt to evade Johnson's 1939 taxes, as to which it is said that since such an attempt could not have become manifest before the filing of Johnson's return on March 15, 1940, the court reasoned that the "investigation" into the charge constituted a new investigation. Of this Mr. Justice FRANKFURTER says:

> Such a view misconceives the duties and workings of a grand jury. It is invested with broad investigatorial powers into what may be found to be offenses against federal criminal law. Its work is not circumscribed by the technical requirements governing the ascertainment of guilt once it has made the charges that culminate its inquiries. A grand jury that begins the investigation of what may be found to be obstructions to justice or passport frauds or tax evasions opens up all the ramifications of the particular field of inquiry.

The intent of Congress not to take a restrictive view of "investigations" is illustrated and emphasized by the Act of April 17, 1940, which amended that of February 25, 1931, so that the time in which a grand jury might sit was increased from three terms to eighteen months, without any restriction against the investigation of new matters. Of that line of argument Mr. Justice FRANKFURTER says:

> One can hardly conceive of a clearer case of a continuing investigation of an old subject-matter than that presented

here. The grand jury in December 1939 began investigation into alleged tax evasions by Johnson. It was allowed to continue its sitting during the February term, and its authority was further extended to permit it to sit during March. The grand jury found a systematic practice of tax evasion over a course of years, and yet, so we are urged, it could not continue to ferret out one more phase of this continuous course of fraudulent conduct because that did not ripen into a separate offense until the last term of the grand jury's sitting.

Of another line of argument by which the circuit court sought to support its main basis Mr. Justice FRANKFURTER says:

> Were the ruling of the court below allowed to stand, the mere challenge, in effect, of the regularity of a grand jury's proceedings would cast upon the government the affirmative duty of proving such regularity. Nothing could be more destructive of the workings of our grand jury system or more hostile to its historic status. That institution, unlike the situation in many states, is part of the federal constitutional system. To allow the intrusion, implied by the lower court's attitude, into the indispensable secrecy of grand jury proceedings—as important for the protection of the innocent as for the pursuit of the guilty—would subvert the functions of federal grand juries by all sorts of devices which some states have seen fit to permit in their local procedure, such as ready resort to inspection of grand jury minutes. . . . To construe these pleadings as the court below did would be to resuscitate seventeenth century notions of interpreting pleadings and to do so in an aggravated form by applying them to the administration of the criminal law in the twentieth century. Protections of substance which now safeguard the rights of the accused do not require the invention of such new refinements of criminal pleading.

The final questions dealt with were whether the evidence warranted the case's going to the jury. It is shown that the trial occupied six weeks, and that the record in the abbreviated form allowed on appeal runs over a thousand printed pages. It is declared that the record has been painstakingly examined and it would be unprofitable to give more than the barest outline of what went to the jury

> The Circuit Court of Appeals read the substantive counts as though they charged Johnson with the filing of false returns on March 15th. That is made an offense, a misdemeanor, by § 145 (a) of the Internal Revenue Code, but that is not the offense with which Johnson was charged. He was charged with a felony made so by § 145 (b), the much more comprehensive violation of attempting "in any manner to defeat and evade" the payment of an income tax. The false return filed on March 15th was only one aspect of what was a process of tax evasion.
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> Johnson was a gambler on a magnificent scale. The income which he himself reported from winnings for one of the years in question exceeded a quarter of a million dollars. The lowest annual income so reported for the period is more than $100,000. His other co-defendants were plainly smaller fry in Chicago's gambling world. Their reported annual gambling income during the same period ranged from $3,600 to $19,000. . . . Indisputably, also, Johnson had a continuous and close relation to these gambling houses. The decisive issue of fact was whether Johnson's relation to these so-called gambling clubs was that of a patron or of a proprietor.
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> The jury decided this central issue against Johnson. And the argument that there was not enough evidence on which a jury was entitled to make such a finding does not call for extended discussion. In making this ultimate finding the jury must have found that the string of gambling houses with which Johnson was associated over a period of years, while ostensibly conducted as separate enterprises by his co-defendants in separate ownership, was in fact a single unified gambling enterprise. A voluminous body of lurid and tedious testimony, often through obviously unwilling witnesses, amply justified the jury in finding that these pretended separate houses were under a single domination.
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> That he had large unreported income was reinforced by proof which warranted the jury in finding that certainly for the years 1937, 1938, and 1939 the private expenditures of Johnson exceeded his available declared resources. It is on this latter ground—namely, that presumably Johnson's expenditures justified the finding that he had some unreported income which was properly attributable to his earnings from the gambling houses—that the court below thought that the evidence on three of the substantive counts, those for 1937, 1938, and 1939, were sufficient to go to the jury. That is enough to sustain the judgment against Johnson, for the sentences on all the counts were imposed to run concurrently.

An important question as to the evidence of an accountant will repay study but must here be passed by.

Mr. Justice ROBERTS concurs in that portion of the opinion which deals with the validity of the indictment. He is of opinion that the judgment of the Circuit Court of Appeals should be affirmed because, in the case of Johnson, substantial trial errors in the admission of evidence operated to his prejudice, and, in the case of the other defendants, because there was no evidence whatever to prove that they aided or abetted Johnson in any effort to commit a fraud upon the revenue and none to prove that they were parties to a conspiracy with him having the same object.

Mr. Justice MURPHY, Mr. Justice JACKSON and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

The case was argued by Mr. Arnold Raum for the United States, and by Mr. Floyd E. Thompson and Mr. William J. Dempsey for Johnson, and submitted by Mr. Harold R. Schradzke for Sommers et al.

Criminal Law—Fourteenth Amendment

A jury in a state court found three persons guilty of first degree murder. Judgments were entered on the verdicts and affirmed by the state court of appeals by a bare majority vote. On certiorari the Supreme Court held that it was entitled to review the judgments of state courts where the action of those courts is inconsistent with the fundamental principles of liberty and justice and "the law of the land," but that the Fourteenth Amendment leaves the states free to enforce their criminal laws under such statutory provisions and common law doctrines as they deem appropriate.

Buchalter v. *New York; Weiss* v. *New York; Capone* v. *New York*, 87 L. ed. Adv. Ops. 1088; 63 Sup. Ct. Rep. 1129; U. S. Law Week 4431. (Nos. 606, 610, 619, decided June 1, 1943.)

Three persons had been convicted of first degree murder in a New York state court after a trial lasting more

than nine weeks. The judgments were affirmed by the court of appeals of the state. Numerous errors were there assigned. Four opinions were written, two of which dissented from the judgments of affirmance, as to which the court divided four to three. In his concurring opinion the chief judge said that he agreed with one of the dissenting opinions that errors and defects occurred in the trial which could not be "disregarded without hesitation lest in our anxiety that the guilty should not escape punishment we affirm a judgment tainted with errors obtained through violation of fundamental rights." His conclusion, however, stated that the errors did not affect the verdict. Two dissenting judges were of opinion that such substantial error was committed as to require a reversal. One judge was of opinion that "the conduct of the trial was so grossly unfair as to leave the defendants without a remote chance of free consideration of their defenses by the jury; so unfair as to deprive them of the presumption of innocence and the requirement of proof beyond a reasonable doubt."

The court of appeals recited in its remittiturs that in brief and argument the appellants had raised the point that they had been denied their constitutional rights under the Fourteenth Amendment, and that this point was considered and necessarily decided. That contention was the basis of the petitions for certiorari.

The opinion of the Court was delivered by Mr. Justice ROBERTS. At the outset the opinion calls attention to the fact that the accused do not rely on any one circumstance but insist that "they were not afforded a fair and impartial jury free from influences extraneous to the proofs adduced at the trial; that they were deprived of an impartial and unbiased judge to preside at the trial and that the prosecutor resorted to unfair methods to influence the jury."

The opinion states that certiorari was allowed "in order that the petitoners' claims of denial of a federal right might be examined in the light of the record with the aid of briefs and oral argument."

Discussing the scope of the due process clause, Mr. Justice ROBERTS says:

> The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as "the law of the land." Where this requirement has been disregarded in a criminal trial in a state court this court has not hesitated to exercise its jurisdiction to enforce the constitutional guarantee. But the Amendment does not draw to itself the provisions of state constitutions or state laws. It leaves the states free to enforce their criminal laws under such statutory provisions and common law doctrines as they deem appropriate; and does not permit a party to bring to the test of a decision in this court every ruling made in the course of a trial in a state court.

The defendants also asserted that "in view of unfair and lurid newspaper publicity, it was impossible to obtain an impartial jury in the county of trial, and that the rulings of the court denying a change of venue, and on challenges to prospective jurors, resulted in the impanelling of a jury affected with bias."

The opinion rejects those contentions and as to them Mr. Justice ROBERTS says:

> We have examined the record and are unable, as the court below was, to conclude that a convincing showing of actual bias on the part of the jury which tried the defendants is established. Though the statute governing the selection of the jurors and the court's rulings on challenges are asserted to have worked injustice in the impanelling of a jury such assertion raises no due process question requiring review by this Court.

The defendants also insisted that "the rulings upon evidence and instructions to the jury, when taken in their totality, indicate that, whatever the intention of the trial judge, his rulings and attitude precluded a fair consideration of the case." As to this branch of the case, the court of appeals held that certain of the challenged rulings and instructions were erroneous but that "they were not substantial in the sense that they affected the ability of the jury to render an impartial verdict, and that others of the alleged errors were not such under the law of New York." As to this point, Mr. Justice ROBERTS says:

> As already stated, the due process clause of the Fourteenth Amendment does not enable us to review errors of state law however material under that law. We are unable to find that the rulings and instructions under attack constituted more than errors as to state law. We cannot say that they were such as to deprive the petitioners of a trial according to the accepted course of legal proceedings.

Finally the prisoners assert that "the prosecuting officer, by suppression of evidence, and by statements in his addresses to the jury was so unfair as to deprive the trial of the essential quality of an impartial inquiry into their guilt." On this point Mr. Justice ROBERTS says:

> The point as to the alleged suppression of evidence is without merit. Certain documentary evidence was in court. The judge ruled that the prosecuting officer need not submit it to defense counsel for examination. If there was error in the ruling it was error of the court. Upon motion for rehearing the Court of Appeals examined the papers and found that they were not of significance in respect of any issue in the case. No such showing of suppression of evidence or connivance at perjury, as has heretofore been held to require corrective process on the part of the state, was shown.
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> The speeches of counsel for defendants apparently provoked statements by the District Attorney of which petitioners now complain. This does not raise a due process question.

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The judgments are affirmed.

Mr. Justice BLACK, substantially agreeing with these views, is of opinion that the petitions should be dismissed.

Mr. Justice MURPHY and Mr. Justice JACKSON took no part in the consideration or decision of this case.

The case was argued by Mr. Arthur Garfield Hays, Mr. Sydney Rosenthal, Mr. I. Maurice Wormser, Mr.

John Schulman and Mr. J. Bertram Wegman for the petitioners, and by Mr. Solomon A. Klein, Assistant District Attorney, Kings County, for the respondent.

Taxation—Income Taxes—Deduction of Business Expenses

A foreign corporation, prohibited from doing an intrastate transportation business in California, organized a wholly owned subsidiary under California law to carry on intrastate business in that state under a contract between the two companies whereby the parent company enjoyed the profits and bore the losses of subsidiary's operations. Under that arrangement, amounts credited to the subsidiary to defray its operating deficits are not deductible as ordinary and necessary expenses of the parent company under § 23(a) of the Revenue Act of 1936.

Interstate Transit Lines v. Commissioner of Internal Revenue, 87 L. ed. Adv. Ops. 1217; 63 Sup. Ct. Rep. 1279; U. S. Law Week 4490. (No. 552, argued April 12, 1943, decided June 14, 1943.)

Interstate Transit, a Nebraska corporation, operated an interstate bus line between California and Illinois. To comply with California law, which forbade a foreign corporation to engage in intrastate business, Interstate organized a wholly owned subsidiary, Union Pacific Stages, under California law to operate in that state. Under the contract between the two corporations, each company leases the buses of the other at the state line, the subsidiary carrying on the operations both interstate and intrastate, in California, and the parent, Interstate, outside of California. Under the agreement Interstate enjoys the profits of the subsidiary and pays the latter's operating deficits.

Interstate claimed a deduction for 1936 of $28,100.66, as an ordinary and necessary business expense, under § 23(a) of the Revenue Act of 1936, representing a credit to the subsidiary for the latter's operating deficits for that year. The Commission, the Board of Tax Appeals, and the Circuit Court of Appeals, each ruled that the deduction should be disallowed. On certiorari the Supreme Court affirmed, in an opinion by Mr. Justice REED. Sustaining the rulings below, he says:

> . . . For petitioner to engage in intrastate business in California was, on the findings, illegal. Thus, the businesses of the two companies were distinct. . . . Even assuming that the interstate business of Stages could be the business of the petitioner, it follows that at most only that part of the deficit attributable to Stages' interstate business could be an expense of petitioner's business and petitioner could not conceivably deduct as a business expense the cost of Stages' intrastate business. There was no showing below as to the allocation of the deductions sought as between Stages' intrastate and interstate business. There is thus no record requiring a further examination of petitioner's argument since in the absence of affirmative proof to the contrary we must assume that the entire deficiency was found correctly by the Commissioner and that the deficit is attributable to Stages' intrastate business.
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> . . . It was not the business of the taxpayer to pay the costs of operating an intrastate bus line in California. The carriage of intrastate passengers did not increase the business of the taxpayer. The profit earned on their carriage increased the taxpayer's profit but so would any other profitable activity wholly disconnected from the taxpayer's own business. As the circuit court pointed out, the assumption of the deficit was not dependent upon a corresponding service or benefit rendered to the petitioner by Stages in connection with petitioner's business.

Mr. Justice JACKSON dissented. Describing the arrangement between the two corporations and characterizing it as "a commonsense business arrangement, for the purpose of making its business profitable," he said:

> I think there is no merit in the taxpayer's theory that the Commissioner must disregard the corporate entity of the subsidiary. If a taxpayer itself creates and uses a corporation, he cannot require the Commissioner to say it isn't there.
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> But on the other hand, if the Commission says there are two entities, it would seem that they would be able to contract with each other, one to perform a service and the other to pay a price.
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> But it is urged that since the taxpayer could not itself pick up local business under California law, it cannot be the business of the taxpayer in a legal sense to have a subsidiary do so, and disbursements to have local business brought in are legally foreign to its business, although for its benefit. . . . The taxpayer may not be authorized to run a newspaper or put up billboards, but if it contracted for services of those who are, in order to fill vacant seats in its buses, I do not suppose its cost would be disallowed for that reason.
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> This company has not violated the law, even of California. Indeed, it went to this trouble to comply with it. . . . If states create dummies, business men may utilize them so long as they keep within the law, and the function of the revenue laws is not to tell them how they shall manage business, but to see that what they do has proper tax consequences.

The CHIEF JUSTICE and Mr. Justice MURPHY joined in the dissent.

The case was argued by Mr. Nelson Trottman for the Transit Lines and by Mr. J. Louis Monarch for the Government.

Taxation—Income Taxes—Disregard of Corporate Entity

In the administration of the income tax acts the corporate entity of a corporation will not be disregarded as between it and its sole stockholder where it appears that the corporation is not the stockholder's alter ego, but performs a function and engages in business of its own.

Moline Properties, Inc. v. Commissioner of Internal Revenue, 87 L.ed.Adv.Ops. 1071; 63 Sup. Ct. Rep. 1132; U. S. Law Week 4429 (No. 660, decided June 1, 1943.)

Moline Properties, Inc., is a corporation organized by one Thompson in 1928 to be used as a security device in connection with real estate owned by him. Thompson conveyed the property to the corporation which assumed the outstanding mortgages on the property and he received all of the stock but qualifying shares. His stock was transferred to a voting trustee appointed by the creditor. His stock was also held as security for an additional loan used to pay back taxes on the property which he held individually. In 1933 the original loan was repaid and the mortgages refinanced with a different mortgagee and control of the corporation reverted to Thompson. The new mort-

gage debt was paid in 1936 through sale of a portion of the property held by the corporation. The remaining lands were sold in three parcels, one each in 1934, 1935 and 1936, and the proceeds were received by Thompson and deposited to his account. In 1934 a portion of the property was leased as a parking lot at a rental of $1,000. The corporation transacted no business after the sale of its last holdings in 1936, but has not been dissolved. The sales made in 1934 and 1935 were reported in corporate income tax returns. Later, Thompson filed a claim for refund on behalf of the corporation for 1935 and sought to report the gain in 1935 as his individual gain. He also reported the gain on the 1936 sale.

The question for decision was whether the gains realized on the 1935 and 1936 sales are corporate income or Thompson's individual income. The Board of Tax Appeals held for the corporation on the ground that because of its limited purpose, it was a mere figmentary agent to be disregarded in the assessment of taxes. The circuit court of appeals reversed. On certiorari the latter's ruling was affrmed by the Supreme Court in an opinion by Mr. Justice REED. Recognizing that in exceptional cases the corporate entity may be disregarded, where it is a sham or unreal, the Court finds the present case not within any established exception. Mr. Justice REED in this case says:

> The petitioner corporation was created by Thompson for his advantage and had a special function from its inception. At that time it was clearly not Thompson's *alter ego* and his exercise of control over it was negligible. It was then as much a separate entity as if its stock had been transferred outright to third persons. The argument is made by petitioner that the force of the rule requiring its separate treatment is avoided by the fact that Thompson was coerced ino creating petitioner and was completely subservient to the creditors. But this merely serves to emphasize petitioner's separate existence. . . . Business necessity, i. e., pressure from creditors, made petitioner's creation advantageous to Thompson.
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> When petitioner discharged its mortgages held by the initial creditor and Thompson came into control in 1933, it was not dissolved, but continued its existence, ready again to serve his business interests. It again mortgaged its property, discharged that new mortgage, sold portions of its property in 1934 and 1935 and filed income tax returns showing these transactions. In 1934 petitioner engaged in an unambiguous business venture of its own—it leased a part of its property as a parking lot, receiving a substantial rental. The facts, it seems to us, compel the conclusion that the taxpayer had a tax identity distinct from its stockholder.

The case was argued by Mr. Nelson Trottman for petitioner and by Mr. J. Louis Monarch for the respondent.

Taxation—Allowance of Depreciation

Under provisions of the Revenue Act of 1938 relating to allowances of depreciation, allowable depreciation in previous years must be deducted from the costs of the property involved in arriving at the depreciation base although the deduction of prior depreciation resulted in no tax benefit to the taxpayer.

Virginian Hotel Corporation of Lynchburg v. Helvering, 87 L. ed. Adv. Ops. 1149; 63 Sup. Ct. Rep. 1260; U. S. Law Week 4449. (No. 766, argued May 12 and 13, 1943, decided June 7, 1943.)

This case involves a question as to the meaning of the provisions of the Revenue Act of 1938 governing depreciation as a deduction from gross income in computing net income. The taxpayer reported depreciation on hotel equipment from 1927 through 1937 on a straight line basis and the tax authorities took no objection to the amounts claimed and deducted. In 1938 the taxpayer claimed deduction at the same rates, but the Commissioner determined that the useful life of the equipment was longer than claimed and that lower rates of depreciation should be used. A deficiency was computed and the depreciation theretofore claimed as deductions was subtracted from the cost of the property and the remainder was taken as the new basis for computing depreciation. A smaller deduction for depreciation was consequently allowed. While there had been a net gain for some years, the years 1931 to 1936 resulted in net losses and the entire amount of depreciation deducted on the rates for those years did not serve to reduce taxable income. The taxpayer accepts the new rates but contends that the amount of depreciation claimed for 1931 to 1936 in excess of the amount properly allowable should not be subtracted from the depreciation basis, because it did not reduce taxable income in those years. The tax court held for the taxpayer but the circuit court of appeals reversed. The Supreme Court granted certiorari to resolve a conflict with a decision in the Third Circuit.

In an opinion by Mr. Justice DOUGLAS the Court affirms the decision below.

Under the Internal Revenue Code, Section 23 (l), depreciation is "allowed" on the basis of the cost of the property in question with proper adjustments for depreciation "to the extent allowed (but not less than the amount allowable) under this Act or prior income tax laws." That provision also provides that the depreciation basis be reduced by the amount "allowable" each year whether or not claimed. The opinion states that the basis must be reduced, moreover, by that amount even though no tax benefit results from the use of depreciation as a deduction. The taxpayer argued that "allowed" unlike "allowable" connotes the receipt of a tax benefit and argues that though depreciation in excess of an "allowable" amount is claimed by the taxpayer and not disallowed by the Commissioner, it is, nevertheless, not "allowed" if the deductions, other than depreciation, produce a loss for the year in question. In rejecting this argument Mr. Justice DOUGLAS says:

> "Allowed" in this setting plainly has the effect of requiring a reduction of the depreciation basis by an amount which is in excess of depreciation properly deductible. We do not agree, however, with the contention that such a reduction

must be made only to the extent that the deduction for depreciation has resulted in a tax benefit. The requirement that the basis should be adjusted for depreciation "to the extent allowed (but not less than the amount allowable)" first appeared in the Revenue Act of 1932. 47 Stat. 169, 201. Prior to that time the adjustment required was for the amount of depreciation "allowable." The purpose of the amendment in 1932 was to make sure that taxpayers who had made excessive deductions in one year could not reduce the depreciation basis by the lesser amount of depreciation which was "allowable." If they could, then the government might be barred from collecting additional taxes which would have been payable had the lower rate been used originally. But we find no suggestion that "allowed," as distinguished from "allowable," depreciation is confined to those deductions which result in tax benefits. "Allowed" connotes a grant. Under our federal tax system there is no machinery for formal allowances of deductions from gross income. Deductions stand if the Commissioner takes no steps to challenge them. Income tax returns entail numerous deductions. If the deductions are not challenged, they certainly are "allowed" since tax liability is then determined on the basis of the returns. Apart from contested cases, that is indeed the only way in which deductions are "allowed." And when all deductions are treated alike by the taxpayer and by the Commissioner, it is difficult to see why some items may be said to be "allowed" and others not "allowed." It would take clear and compelling indications for us to conclude that "allowed" as used in § 113 (b) (1) (B) means something different than it does in the general setting of the revenue acts.

The CHIEF JUSTICE delivered a dissenting opinion in which Mr. Justice ROBERTS, Mr. Justice MURPHY and Mr. Justice JACKSON joined. He says in part:

> I can find no warrant in the purpose or the words of the statute, or in the principles of accounting, for our saying that the taxpayer is required to reduce his depreciation base by any amount in excess of the depreciation "allowable," which excess he never has in fact deducted from gross income. Whatever else the statutory reference to depreciation "allowed" may mean, it obviously cannot and ought not to be construed to mean that a deduction for depreciation which has never in fact been subtracted from gross income is a deduction "allowed."
>
> And there is no reason why such should be deemed to be its meaning. The only function of depreciation in the income tax laws is the establishment of an amount, which may be deducted annually from gross income, sufficient in the aggregate to restore a wasting capital asset at the end of its estimated life. The scheme of the 1938 Revenue Act is to prescribe the permissible deductions for depreciation, and to preclude the taxpayer from gaining any unwarranted advantage by the amount and distribution of those deductions. The Act accomplishes the latter by compelling the taxpayer to reduce his depreciation base by the amount of the allowable annual depreciation, whether deducted from gross income or not, and by such further amount as he has in fact deducted from gross income. No reason is suggested why the taxpayer's tax for future years should be increased by reducing his depreciation base by any amount in excess of the depreciation "allowable," unless the excess has at some time and in some manner been deducted from gross income. So inequitable a result cannot rightly be achieved by saying that a "deduction" for depreciation which never has been deducted from gross income has nevertheless been "allowed."

Mr. Justice JACKSON delivered a separate dissent. In it, after a brief reference as to certain facts, he says:

> The Commissioner proposed to correct taxpayer's returns by considering only the year in question. He eliminated the error as far as it affected the rate and thus reduced the depreciation accrual and increased the tax. But he retained the base as reduced by the taxpayer's accumulated errors, refusing to readjust the base consistently with the corrected depreciation rates.
>
> To the extent that the taxpayer had obtained advantage from the use of the higher depreciation rate, I would think it quite justifiable to refuse to make a correction. The Government, however, stipulates as to the years in question that "the entire amount of the depreciation deducted on the income tax returns for those years did not serve to reduce the taxable income." We should not disregard a deliberately made stipulation, even if, on our limited knowledge of its background, we are in doubt as to why it was made. The question comes simply to this: Whether the Commissioner, upon determining whether taxpayer has in good faith erred, may use a correction in so far as it helps the Government and adhere to the mistake in so far as it injures the taxpayer. I think that no straining should be done to find a construction of the statutes that will support the result.

The case was argued by Mr. William A. Sutherland for the Hotel Corporation and by Mr. Samuel H. Levy for the Government.

The Ross Prize Essay in 1943

(Continued from page 446)

the archives of the perennial competition. Selection is properly made on the basis of excellence and significance as a contribution to discussion of the chosen subject, not because of agreement or disagreement with the particular views. The essay will be found to be well worth reading and careful study, by those who are dealing with its timely topic.

Many current events have combined to bring to the fore the historic concern of many lawyers and other citizens for "the vanishing rights of the states." The animated proceedings of the recent Conference of Governors, and the practical measures initiated by many state governments to meet emergent conditions as to food, crops, farm labor, gasoline supply, tax burdens, and the like, have given new impetus to the reassertion of state prerogatives. There is widespread belief that strong and independent governments in the many states are bulwarks and citadels against centralized and arbitrary powers in bureaucratic hands. From earliest times, many states wrote into their basic law their adherence to "a government of laws, not of men." Repeatedly the American Bar Association and its House of Delegates have declared their confidence in the federal system and their concern that the sovereignties vouchsafed to the states by the Constitution shall not be impaired in the absence of express amendment made advisable by experience.

(Continued from page 445)

12:00 M. to 2:00 P.M.

Balloting by members for election of Officers and Council members for the ensuing year

2:00 P.M.

Meeting of Commitee on Elections to count ballots

LEGAL EDUCATION AND ADMISSIONS TO THE BAR
jointly with
NATIONAL CONFERENCE OF BAR EXAMINERS

Tuesday, August 24

9:30 A.M.

John Kirkland Clark, Chairman, the National Conference of Bar Examiners, presiding

Address of the Chairman, John Kirkland Clark, New York City

"The Legal Examining Work of the Federal Government," by Ralph F. Fuchs, Executive Secretary, the Board of Legal Examiners in the Civil Service Commission, Washington, D. C.

"Maintain the Standards of Admission to the Bar," by Herbert W. Clark, Past Chairman, California Committee of Bar Examiners, San Francisco, California

Other speakers to be announced

Informal discussion

Election of officers of the National Conference of Bar Examiners

2:00 P.M.

Dean Albert J. Harno, Chairman, Section of Legal Education and Admissions to the Bar, presiding

Subject: Post-War Legal Education

Address by Dean Albert J. Harno

"Program for Law Students Whose Study Has Been Interrupted by the War"

General discussion

"Desirable Curricular Changes in Law School Study after the War," by Arthur T. Vanderbilt, Newark, New Jersey

General discussion

"Post-Admission or Continuing Legal Education," by Carl B. Rix, Milwaukee, Wisconsin

General Discussion

Election of Officers of Section of Legal Education and Admissions to the Bar

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MINERAL LAW

Tuesday, August 24

9:30 A.M.

Floyd A. Calvert, Chairman, presiding

Reading of minutes of previous meeting

Report of Chairman

Reports of Committees:

Oil, George W. Cunningham, Chairman, Tulsa, Oklahoma

Natural Gas, William A. Dougherty, Chairman, New York City

Coal, George Richardson, Jr., Chairman, Bluefield, West Virginia

Appointment of Nominating Committee

New Business

"Problems of P.A.W.," by J. Howard Marshall, General Counsel of P.A.W.

"Post-War Status of Mineral Industries," Russell B. Brown, Counsel for I.P.A.A.

"Pipe Line Transportation in the War Emergency," W. R. Finney, Standard Oil Company of New Jersey

2:00 P.M.

"Government Seizure and Operation of Coal Mines," John C. Gall, Washington, D. C.

Round Table discussion

Report of the Nominating Committee

Election of Officers

Unfinished business

New business

Adjournment

MUNICIPAL LAW

Sunday, August 22

3:00 P.M.

Meeting of Section Council and Committee Chairmen

Monday, August 23

2:00 P.M.

Joint meeting with Section of International and Comparative Law

Discussion of the proposed International Bill of Rights

Tuesday, August 24

10:00 A.M.

James L. Beebe, Vice Chairman, presiding

Report of the Chairman

Appointment of Nominating Committee

Addresses (speakers to be announced)

Reports of Committees

Luncheon

12:30 P.M.

Jointly with Sections of Commercial Law and Taxation

W. Leslie Miller, Chairman, Section of Commercial Law, presiding

Address by Honorable Harry F. Kelly, Governor of Michigan

2:00 P.M.

James L. Beebe, Vice Chairman, presiding

Addresses (Speakers to be announced)

Reports of Standing and Special Committees

Report of Nominating Committee

Election of Officers and new members of Council

Adjournment

Wednesday, August 25

2:00 P.M.

Joint session with Sections of Commercial Law, Mineral Law, Real Property, Probate and Trust Law, and Taxation

Henry F. Long, Boston, Massachusetts, presiding

Round table discussion of report submitted to the Secretary of the Treasury by the Committee on Intergovernmental Fiscal Relations

PATENT, TRADE-MARK AND COPYRIGHT LAW

Monday, August 23

11:00 A.M.

Business session of International Association for the Protection of Industrial Property (American Group)

Luncheon

12:00 M.

John A. Dienner, Chairman, presiding

Address by Conway P. Coe, United States Commissioner of Patents, Washington, D. C.

2:00 P.M.

Address of Welcome, by Lester Mann, President, Chicago Patent Law Association
Report of the Chairman
Appointment of Nominating Committee
Reports of Committees:
- Copyrights, Edward A. Sargoy, Chairman, New York City
- Corrective Publicity, Norman N. Holland, Chairman, New York City
- Ethics and Grievances, Irvin H. Fathchild, Chairman, Chicago, Illinois
- Committee before the House of Delegates of the American Bar Association, Roy C. Hackley, Jr., Chairman, Washington, D. C.
- International Copyrights, Edward A. Sargoy, Chairman, New York City
- Legislation, Chester L. Davis, Chairman, Washington, D. C.
- Membership, John H. Cassidy, Chairman, St. Louis, Missouri
- Patent Law Revision, W. Darley Keith, Chairman, New York City
- Patent Office Advertising, Fulton Brooks Flick, Chairman, Pittsburgh, Pennsylvania
- Patent Office Affairs, Emory L. Groff, Chairman, Washington, D. C.
- Protection of Industrial Designs, Henry D. Williams, Chairman, New York City
- Invention and Patentability, Max W. Zabel, Chairman, Chicago, Illinois
- Primary and Secondary Patents, George Von Gehr, Chairman, Chicago, Illinois
- Court of Claims, John D. Myers, Chairman, Philadelphia, Pennsylvania
- Revision of Interference Practice, Otto R. Barnett, Chairman, Chicago, Illinois
- National Patent Planning Commission (Kettering Committee), Dean S. Edmonds, Chairman, New York City
- Trade-Marks, Wallace H. Martin, Chairman, New York City.
- War Activity, Robert C. Brown, Jr., Chairman, Chicago, Illinois

Tuesday, August 24

9:30 A.M.

Reports of Committees (continued)

12:30 P.M.

Luncheon

John A. Dienner, Chairman, presiding

Address by Henry J. Kaiser, President, Henry J. Kaiser Corporation

2:30 P.M.

Reports of Committees (continued)
Unfinished business
New business
Election of Officers
Adjournment

8:00 P.M.

Dinner

John A. Dienner, Chairman, presiding

Address by Honorable Evan A. Evans, United States Circuit Court of Appeals, Chicago, Illinois
Installation of Officers

PUBLIC UTILITY LAW

The Section of Public Utility Law will not hold a meeting during the week of August 23-26.

REAL PROPERTY, PROBATE AND TRUST LAW

Monday, August 23

12:00 M.

Luncheon meeting of the Council

2:00 P.M.

General Session

Address of Welcome
Report of Secretary, James E. Rhodes, 2d, Hartford, Connecticut

"Federal Benefits for Dependents of Killed, Wounded and Missing Veterans," Y. D. Mathes, Veterans Administration, Washington, D. C.

"Missing Beneficiaries, Fiduciaries and Principals—the Need for Legislation," Gilbert Stephenson, Wilmington, Delaware

"Advice to Legal Advisers of Soldiers and Sailors," Tappan Gregory, Chicago, Illinois

Report of Committee on New Members for Section, William L. Beers, Chairman, New Haven, Connecticut

Tuesday, August 24
9:30 A.M.

REAL PROPERTY LAW DIVISION

"Adjustment of Real Property Practice to War Conditions," Benjamin Wham, Chicago, Illinois

"Changes in Substantive Real Property Principles," Lessing Rosenthal, Chicago, Illinois

"Real Property Financing," Bettin E. Stalling, Chicago, Illinois

Reports of Committees:

Standards, Harold Lee, Chairman, Washington, D. C.

Joint Committee with American Society of Civil Engineers, Dorr Viele, Chairman, Boston, Massachusetts

9:30 A.M.

JOINT MEETING OF PROBATE AND TRUST DIVISIONS

"Current Developments in Taxation, State and Federal," Walter L. Nossaman, Los Angeles, California

"State Legislation Affecting Trusts and Estates," Emerson R. Lewis, Chicago, Illinois

"Current Trust and Probate Literature," P. Philip Lacovara, New York City

Reports of Committees:

Estates of Veterans, William O. Wilson, Chairman, Cheyenne, Wyoming

Improvement of Probate Statutes, R. G. Patton, Chairman, Minneapolis, Minnesota

Effect of War Legislation upon Trusts and Estates, Francis W. Hill, Jr., Chairman, Washington, D. C.

Soldiers' and Sailors' Wills, Everett Paul Griffin, Chairman, St. Louis, Missouri

Substituted Fiduciaries for Fiduciaries in War Service, Ferris D. Stone, Chairman, Detroit, Michigan

Current Trust and Probate Decisions, Arthur F. Young, Chairman, Cleveland, Ohio

2:30 P.M.

General Session

"Rights of Resident and Non-Resident Aliens in Trusts and Estates," Francis J. McNamara, Assistant to the Alien Property Custodian, Washington, D. C.

"War Boom: New Problems of Allocation between Various Beneficiaries," James M. Trenary, Vice President, United States Trust Company, New York City

"Condemnation for the Duration of the War, the New Federal Statute," Norman M. Littell, Assistant Attorney General, Washington, D. C.

"Streamlining the Procedure for the Settlement of Accounts," Nelson Brewer, Judge of the Probate Court, Cleveland, Ohio

Election of Officers and Members of Council

TAXATION

Sunday, August 22
9:30 A.M.

Meeting of Council and Committee Chairmen

Monday, August 23
2:00 P.M.

Round Table Discussion of Modern Law for Taxation of Property of Public Utilities, Albert Smith Faught, Chairman, Committee on State and Local Property Taxes, presiding

Tuesday, August 24
10:00 A.M.

Weston Vernon, Jr., Chairman, presiding

Report of Chairman

Appointment of Nominating Committee

Address by Dr. Harold M. Groves, University of Wisconsin, formerly Chief of Staff, United States Treasury Committee on Intergovernmental Fiscal Relations

Reports of Committees:*

Federal Estate and Gift Taxes, Lawrence E. Green, Chairman, Boston, Massachusetts

Federal Excess Profits Taxes, James K. Polk, Chairman, New York City

Federal Income Taxes, Morton P. Fisher, Chairman, Baltimore, Maryland

Federal Excise and Miscellaneous Taxes, Stafford Smith, Chairman, New York City

Old Age Benefit and Unemployment Insurance Taxes, Gustav H. Dongus, Chairman, Indianapolis, Indiana

Luncheon

12:30 P.M.

Jointly with Sections of Commercial Law and Municipal Law

W. Leslie Miller, Chairman, Section of Commercial Law, presiding

Address by Honorable Harry F. Kelly, Governor of Michigan

*Reports of committees will be summarized, and not read, except by vote of the meeting. Discussion is invited from the floor, not only respecting a committee's report but regarding subjects the committee should consider for the coming year.

2:00 P.M.

Weston Vernon, Jr., Chairman, presiding

Reports of Standing Committees:

Coordination of Federal, State and Local Taxes, Henry F. Long, Chairman, Boston, Massachusetts

State and Local Death and Gift Taxes, Murray Seasongood, Chairman, Cincinnati, Ohio

State and Local Franchise and Miscellaneous Taxes, Herbert J. Hannoch, Chairman, Newark, New Jersey

State and Local Income Taxes, Philip F. Sherman, Chairman, St. Paul, Minnesota

State and Local Property Taxes, Albert Smith Faught, Chairman, Philadelphia, Pennsylvania

State and Local Sales and Use Taxes, Robert Granville Burke, Chairman, New York City

Cooperation with State and Local Bar Association Tax Groups, Robert C. Vincent, Chairman, New York City

Membership, James P. Economos, Chairman, Chicago, Illinois

Reports of Special Committees:

Section Roster, Kenneth W. Gemmill, Chairman, Philadelphia, Pennsylvania

Correlation of Federal Income, Estate and Gift Taxes, Jesse R. Fillman, Chairman, Philadelphia, Pennsylvania

Law School Education, Erwin N. Griswold, Chairman, Cambridge, Massachusetts

Internal Revenue Administrative Code, William A. Sutherland, Chairman, Atlanta, Georgia

Report of Nominating Committee

Election of Council and Officers

Open Forum

Adjournment

Wednesday, August 25

2:00 P.M.

Joint session with Sections of Commercial Law, Mineral Law, Municipal Law, and Real Property, Probate and Trust Law

Round table discussion of report submitted to the Secretary of the Treasury by the Committee on Intergovernmental Fiscal Relations, Henry F. Long, Boston, Massachusetts, presiding

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National Conference of Commissioners on Uniform State Laws

FIFTY-THIRD ANNUAL MEETING, AUGUST 17-21, 1943

Ballroom, The Drake Hotel, Chicago, Illinois

This tentative program is subject to change for considering drafts of proposed State War Legislation which may be recommended by the Executive Committee of the Conference.

Tuesday, August 17

9:00 A.M.

Meeting rooms will be available for meetings of Sections and Committees prior to the hour of the opening session at 11:00 A.M.

11:00 A.M.

FIRST SESSION

Address of Welcome

Response

Roll Call

Announcement of Appointment of Nominating Committee

Address of President, John Carlisle Pryor

Reports of other Officers, and Committees which have reports requiring action by the Conference.

2:00 P.M.

SECOND SESSION

Consideration of Final Draft of Uniform Administrative Procedure Act, E. Blythe Stason, Chairman

Consideration of Report of Committee and Tentative Draft of Uniform Act Giving Statutory Recognition to the Doctrine of Cy-Pres in Construing Charitable Trusts, Sherman R. Moulton, Chairman

8:00 P.M.

Section and Committee Meetings.

Wednesday, August 18

9:30 A.M.

THIRD SESSION

Report of Nominating Committee and Election of Officers

Consideration of Revised Uniform Sales Act, Karl N. Llewellyn, Chairman

2:00 P.M.

FOURTH SESSION

Consideration of Report of Committee and Tentative Drafts of Uniform Act on Survival of Tort Actions and Death by Wrongful Act, Kingsland Van Winkle, Chairman

8:00 P.M.

FIFTH SESSION

Consideration of Revised Uniform Sales Act, Karl N. Llewellyn, Chairman

Thursday, August 19

9:30 A.M.

SIXTH SESSION

Consideration of Report of Legislative Committee, Boyd M. Benson, Chairman

Consideration of Report of Committee on Review and Revision of Uniform and Model Acts, Albert J. Harno, Chairman

Consideration of Report of Committee on Emergency War Measures, James C. Wilkes, Chairman

Consideration of Report of Committee and Tentative Drafts of Uniform Acts on Double Taxation of Intangibles, Henry S. Fraser, Chairman

Consideration of Report of Committee and Tentative Draft of Uniform Act Abolishing Possibilities of Reverter After Lapse of Time, Lawrence A. Howard, Chairman

2:00 P.M.

SEVENTH SESSION

Consideration of Revised Uniform Sales Act, Karl N. Llewellyn, Chairman

4:30 P.M.

Consideration of proposed amendments to the Constitution of the Conference

8:00 P.M.

EIGHTH SESSION

Consideration of Revised Uniform Sales Act, Karl N. Llewellyn, Chairman

Friday, August 20

9:30 A.M.

NINTH SESSION

Consideration of Report of Committee on Uniform Ancillary Administration of Estates Act, including consideration of Tentative Drafts of Uniform Ancillary Administration of Estates Act and Uniform Powers of Foreign Personal Representatives Act, Otis S. Allen, Chairman

2:00 P.M.

TENTH SESSION

Consideration of Revised Uniform Sales Act, Karl N. Llewellyn, Chairman

4:30 P.M.

Memorials

Saturday, August 21

9:30 A.M.

ELEVENTH SESSION

Consideration of Revised Uniform Sales Act, Karl N. Llewellyn, Chairman

2:00 P.M.

TWELFTH SESSION

Consideration of Report of Committee on Uniform Ancillary Administration of Estates Act, including consideration of Tentative Drafts of Uniform Ancillary Administration of Estates Act and Uniform Powers of Foreign Personal Representatives Act, Otis S. Allen, Chairman

Consideration of Deferred Uniform Acts

Consideration of First Tentative Drafts of Other Proposed New Uniform Acts

Unfinished Business

New Business

Adjournment

If necessary to complete the work of the Conference, additional evening sessions will be held as the Conference may provide. At the time of preparation of this tentative program some Committee Chairmen have not completed their reports, and such additional time as may be required will be provided for consideration of such additional reports.

BOOK REVIEWS

The Permanent Court of International Justice: 1920-1942, by Manley O. Hudson. 1943. New York: Macmillan. Two vols. Pp. XXIV, 807. $7.

World Court Reports: A Collection of the Judgments, Orders and Opinions of the Permanent Court of International Justice, Manley O. Hudson, Editor. Vol. 4, 1936-1942. 1943. Washington: Carnegie Endowment for International Peace. Pp. XVI, 513. $2.50.

The Permanent Court of International Justice, after twenty years of useful activity, suspended its work in 1940. Its statute continues to bind a large portion of the states of the world, its library and courtroom are still extant at the Hague, and most of its judges are ready to take their seats when conditions are more auspicious. This suspension is, therefore, temporary, but it will be sufficient to mark these two decades as a distinctive period in the Court's history.

Judge Hudson's comprehensive volume will be the authoritative treatment of that period for a long time. It deals with earlier successful and unsuccessful attempts to establish international courts, with the origin of The Permanent Court of International Justice, the drafting of its statutes, its organization and personnel, its history, its jurisdiction, its procedure, and its law.

Judge Hudson has previously produced a book of essays on the Court (1925), a series of handbooks on the World Court published annually after 1928, and the series of World Court Reports, Volume 4 of which has just appeared, as well as the treatise on the Court first published in 1934. The present volume is a second edition of this treatise. It is, however, greatly enlarged.

The author's attitude is conservative. He characterizes as "artificial" (pages 89, 109) or as casting a "spell" over certain minds (86), proposals such as opening The Permanent Court of International Justice or any other international tribunal to actions by individuals (page 396); as establishing an International Criminal Court (page 89); as distinguishing sharply between international "arbitration" and "adjudication" (page 109) and as permitting the Court to develop international law through extensive use of subjective sources. He does, however, recognize that "if it is to serve the needs of a society of states, it [the Court] must have a limited power to create law in some cases," (page 605), and, as a judge, he has not been indisposed to argue from general maxims of law and equity. He also views with equanimity the possibility of public international unions or associations being parties before the Court (page 383).

International lawyers will be especially interested in the chapters on the sources of international law (Chapter 28) and on the interpretation of treaties (Chapter 29), which contains a vast amount of careful legal thought on such subjects as the rôle of custom, of legal maxims, of principles of equity, of precedents, and of text-writers in the development of international law, and upon the use of context, preparatory materials, analogies, etc., in interpretation of treaties.

Appendices containing the essential documents and indexes to cases, persons and subjects are presented, rendering the vast amount of accurate fact and legal learning easily available.

At the same time as Hudson's treatise, appears his edition of the fourth volume of the World Court Reports. It includes texts of instruments concerning the Court from 1936-1942 and the judgments and orders delivered in ten cases during the same period. Hudson's reports are much more convenient for English-speaking readers than the official reports, though the latter must be referred to for the French texts. The present volume is of particular interest because it covers the period of Hudson's service as one of the judges. Well worth reading is his individual opinion in the Meuse case. The Netherlands asked a judgment that Belgium be required to discontinue the withdrawal of water from the Meuse in violation of the Treaty of 1863 between the two countries. Beligium contended that such a judgment should not be given because the Netherlands was violating the Treaty in exactly the same manner. Hudson's concurring opinion sustained this contention on the ground that "the Court has some freedom to consider principles of equity as part of the international law which it must apply," and that equity requires that "he who seeks equity must do equity" (page 232). Incidentally, he seized the occasion for some illuminating comment.

QUINCY WRIGHT

University of Chicago

Ballots and the Democratic Class Struggle, by Dewey Anderson and Percy E. Davidson. 1943. Stanford University Press. Pp. XIII, 380.—This work by two political scientists and experienced administrators is a sort of political Middletown. It will undoubtedly serve as a handbook for students of democratic government and politicians, since it furnishes much useful information concerning voters, voting and electioneering; and it also considers and answers certain theoretical questions of interest to educators and champions of representative government and universal suffrage.

There are, it is true, no revelations in the volume. All its conclusions are known to intelligent persons and are based on observation and common sense. But the data patiently collected and interpreted are worthy of

attention, and some political factors of significance are shown to possess more weight and force than is generally believed to be the case.

The authors are realists, and in shattering some naive ideas and illusions they do not indict democracy as a principle or system. But they cannot accept either the theory of the class struggle of the Communists or the romantic and fanciful theory of the general will, or the voluntary subordination of individual interest to the common welfare. Few persons really care for the greatest good of the greatest number. We vote because we demand rights or privileges from the government, because we have grievances, because we think we have been neglected. We form pressure groups, we organize lobbies, we present programs conceived in self-interest. We have no fixed classes, and men and women still rise from the ranks and achieve wealth or power by their own efforts. Our society is still dynamic, fluid, democratic. America is still another name for opportunity, though to a more limited extent than during the pioneer era.

The authors have studied the voting records of 70,000 registered voters in one California county, and have traced the rôle of tradition, prestige, habit, occupation and income in determining political behavior. They refrain from vain sermonizing or futile scolding. We are what we are, but education does slowly improve conduct, and we may hope to learn from our political experience. Progress is not a dream. We have advanced morally as well as intellectually, and to know the truth is to avoid self-deception and lay a solid foundation for sound and constructive policies and laws.

VICTOR S. YARROS

La Jolla, Cal.

RECENT PUBLICATIONS

TRADING WITH THE ENEMY IN WORLD WAR II, by Martin Domke. 1943. New York: Central Book Company. Pp. xv, 640.

JUDAH P. BENJAMIN—CONFEDERATE STATESMAN, by Robert Douthat Meade. 1943. New York: Oxford University Press. Pp. ix, 432. Price $3.75.

REGULATORY ADMINISTRATION, edited by George A. Graham and Henry Reining, Jr. 1943. New York: John Wiley & Sons, Inc.; London: Chapman & Hall, Ltd. Pp. 254. Price $2.75.

MOULDERS OF LEGAL THOUGHT, by Bernard L. Shientag. 1943. New York: The Viking Press. Pp. ix, 253.

THE COURTS AND THE POOR LAWS IN NEW YORK STATE, 1784-1929, by Martha Branscombe. 1943. Chicago: The University of Chicago Press. Pp. xv, 415. Price $2.50.

THE GOVERNMENT OF FRENCH NORTH AFRICA, by Herbert J. Liebesny. 1943. Philadelphia: University of Pennsylvania Press. Pp. 130. Price $1.50.

JUNIOR BAR NOTES

By HUBERT D. HENRY
Secretary, Junior Bar Conference

PLANS for the Tenth Annual Meeting and Second War Meeting of the Junior Bar Conference are rapidly crystallizing. The two general sessions to be held on Sunday afternoon, August 22, and Tuesday morning, August 24, will interestingly portray the war work of the Conference.

The committee reports that are being received by national Chairman Joseph D. Calhoun, Media, Pa., contain constructive recommendations which must be considered by the membership in formulating the program for the coming bar association year.

Albert E. Jenner, Jr., Chicago, chairman of the Program Committee, reports that he is making progress with his efforts to obtain a radio hook-up for speakers of national prominence who will address the Conference on Sunday afternoon on post-war problems of the legal profession.

Chairman Calhoun is working on his annual report and has several important suggestions to make for keeping the Conference personnel working during the further years of prospective depletion in membership of the Conference.

Invitations to participate in the third annual meeting of state and local junior bar group delegates have been sent to the officers of such groups. Reports are now being received from these groups for the purpose of determining the winners of awards to be made at the luncheon which is to be held on Monday, August 23. There will be four groups recognized for the activity they have undertaken during the past year. The state organization having excelled in war work and the one having the best general all-around program will receive certificates of award. Similar presentations will be made to local association groups.

Although curtailment in many civilian commodities has taken place and a more restricted program than usual must, of necessity, be undertaken, the Chicago Bar Association, one of the hosts, has authorized the appointment of a Committee on Entertainment for younger members to extend the usual Chicago hospitality to the visitors. Tappan Gregory, general chairman of the Entertainment Committee, will be assisted by James P. Economos, chairman of the Younger Members Entertainment Committee. This committee will cooperate with the Committee on Local Arrangements, under the leadership of Morris I. Leibman, in planning for the visitors.

All the committees of the Conference are continuing with their duties, many of which will not be completed by the time of the annual meeting. Park Street, San Antonio, Texas, chairman of the Committee on Legal Assistance to the Armed Forces, reports that practically all the Compendiums have been received from all state advisors to his committees. The editors of the Compendium, Newell S. Boardman and L. Duncan Lloyd of Chicago, are working to complete the publication of the Compendium in time for distribution at the annual meeting. They are receiving yeoman service from a sub-committee of the Chicago Bar Association Younger Members Committee consisting of John M. O'Connor, Jr., chairman, and Gerald VanDoren, Frank C. Bernard, William D. McFarland, George A. Hansen, Samuel Richard Lewis, Jr., and Walter D. Herrick, Jr.

Park Street has impressed upon us the fact that it would have been impossible to comply with the request of Tappan Gregory, chairman of the War Work Committee of the American Bar Association, and the Army and Navy legal assistance officers for this Compendium without the many unselfish sacrifices that have been made by the state advisers to this committee.

The report of this committee and that of the Committee on War Readjustment, headed by Lyman M. Tondel, Jr., New York City, and the Traffic Court Committee, under the leadership of Watson Clay, Louisville, Ky., will hold the spotlight at this meeting. However, reports from Philip Lewis, Topeka, Kans., national director of the Procedural Reform Surveys; Charles B. Stephens, Springfield, Ill., chairman of the Committee on Relations with Law Students; Earl F. Morris, Columbus, Ohio, chairman of the Committee in Aid of the Small Litigant; R. David Kreitler, Philadelphia, Pa., chairman of the Committee on Restatement of the Law, and Eugene Gerhart, Newark, N. J., chairman of the Committee on Membership, show that definite progress has been made during the year. Programs conducted by these men have been brought closer to completion and should be continued in the new schedule of activities for 1943-44.

The Traffic Court Committee will present special programs to the membership during the second general session. It is planned to have two short addresses by an outstanding traffic court judge and a noted traffic safety expert. These will be followed by a panel discussion to illustrate the practical manner in which the war problems of the traffic court have been solved by the more progressive courts. James P. Economos, Chicago, Ill., secretary of the committee, will also report on his trip to the Pacific Coast states. This is his fourth field trip on behalf of the committee's work. He conferred with committees in Los Angeles, San Francisco, Portland, and Seattle. He also held meetings with the state chairmen of Idaho, Montana, North Dakota, South Dakota, Utah and Wyoming.

WAR NOTES

By TAPPAN GREGORY

Of the Chicago Bar

THE Navy is now establishing legal assistance offices pursuant to a plan, recently made effective, which is comparable to the one provided for by the Army under W. D. Circular 74.

Reported in the *Ohio State Bar Association Report* of June 14, 1943, is Public Law 24 of the 78th Congress, approved April 9, 1943, providing that such officers of the Navy, Marine Corps and Coast Guard, as the Secretary of the Navy may designate, shall have the general powers of a notary public in the administration of oaths, the execution, acknowledgement and attestation of instruments and papers and the performance of all other notarial acts.

The May 24, 1943, issue of the same publication reports a resolution of the Dayton Bar, listing services that will be rendered by its Committee on War Activities, Col. Roy G. Fitzgerald, chairman, to those in the armed forces without charge and services for which minimum charges will be made. Officers are not eligible for such services and domestic relations problems are excluded where they involve a conflict of interest between a soldier and his dependents.

The Ohio legislature, by an Act approved April 6, 1943, authorized any commissioned officer of the armed forces of the United States to administer oaths in the same manner as justices of the peace, a commissioner of the state or a notary public might do.

The Indiana State Bar Association's Committee on War Work has eleven district chairmen under General Chairman Jeremiah L. Cadick and representation in every county of the state. Altogether there are 116 lawyers on this committee.

George S. McGaughey, chairman of the Illinois State Bar Association committee, has created county organizations under county chairmen in all counties of the state. All service rendered by this committee to servicemen and their dependents is gratuitous. Defense on criminal charges, divorce matters and collections are not undertaken.

The work of the Chicago Bar Association committee, Charles F. Hough, chairman, is subject to like limitation.

In Rhode Island, Chairman W. Louis Frost reports that "A fee has been requested in cases where the soldier has requested institution of divorce proceedings." He himself has not known of any such proceeding resulting from applications to him because no soldier has advanced the necessary fees. Mr. Frost has set up county committees and some town and city committees. The same system in general has been followed in Maine, New Hampshire and Massachusetts under the respective chairmanships of Mr. Robinson, Mr. Wyman and Judge Reilly. Mr. Frost has rendered an opinion to the American Red Cross that an absentee marriage cannot be performed in Rhode Island, though recognized there if consummated in a state where authorized by statute.

Both New Hampshire and Wisconsin have published pamphlets patterned after the checklist prepared by the War Committee of the Bar of the City of New York. The same substance is contained in a document denominated a "Guide" distributed by the committee of the Colorado State Bar under the chairmanship of Benjamin E. Sweet. A similar publication is contemplated in Rhode Island. An announcement has been made that a booklet on the same subject has been prepared by Paul W. Steer, chairman of the Soldiers' and Sailors' Civil Assistance Committee of the Cincinnati Bar Association for distribution and for publication in the Court Index. Mr. Steer has given some valuable advice on the proper construction of the Soldiers' and Sailors' Civil Relief Act in the columns of the Cincinnati *Enquirer*.

In California the War Work and Public Relations Committee of the State Bar, Arnold Praeger, chairman, has mailed to every legal assistance officer in California a list containing the names and addresses of over 1,500 lawyers willing to assist. With this list has been sent a letter designating the cases that are handled free and those in which a fee may be charged. Since Pearl Harbor the lawyers of California have rendered assistance in something over 20,000 cases.

Reginald I. Kenney, chairman of the War Legal Service Committee of the State Bar Association of Wisconsin, reports that the Wisconsin legislature has enacted into law Chapter 235 Laws of 1943, creating Sec. 319.06 providing for the appointment of conservators of property of men in service.

Objection to war for humanitarian reasons founded on religious training and belief entitled a registrant under the Selective Service Law to exemption as a conscientious objector according to the United States Circuit Court of Appeals for the Second Circuit.

The *Legal Record* (Detroit, Michigan) reports a case in which a registrant originally classified 3-A because he was the sole support of his ill parents and of his wife, an expectant mother, was reclassified when the only change in his situation was the birth of his child. The United States District Court for the District of New Jersey held the reclassification "unlawful, arbitrary and capricious".

THE HEART OF ENGLAND

"Somewhere Near the Temple Bar"

IN his often-stirring notes "From an English Office Window," in the *Canadian Bar Review* for June and July (the issues being combined because of the war limitations), "Middle Templar" has heartening things to say as to the place of law in the national life, and quotes a distinguished British layman as recently writing that "I sometimes think that the heart of England is somewhere near the Temple Bar."

"The place which law occupies in the national life, especially among the English speaking peoples," says "Middle Templar," "is readily recognized by lawyers, but it is not so willingly appreciated by laymen. On that account perhaps I may draw attention to a volume, recently published by the Oxford University Press, by Dr. Ernest Barker with the title 'Britain and the British People.' It will also be welcomed by many for its intrinsic charm and worth, especially at the present time. It is rare to read from the pen of a layman such a passage as that which he appends to a chapter in a series of notes of a ride through the city of London and into Westminster covering a succession of three areas, the City, Society and the State, symbolical of English life. 'When I try to understand,' he writes, 'the organized scheme of our national life—our Society with all its voluntary associations and our State with all its liberties—I take off my hat to the lawyers . . . . I sometimes think that the heart of England is somewhere near the Temple Bar.' Although Dr. Barker has been quite near to the study of law as Professor of Political Science in Cambridge and lecturer of the Lowell Foundation in Boston, yet he has never been actually a student of law, though he has forensic ability to argue on almost any current controversial topic. His point of view of law is detached enough to recognize its defects 'expensive, uncodified and what not', and still he is able to say it is about the best thing we have.'"

English Law in Wartime

(Continued from page 434)

protect the interests of its members serving in the forces and safeguard their practices as far as possible, pending their return. So today a barrister who replaces a serving colleague shares his fee with him.

It is plain that lawyers have had their share of sacrifice, intensified by the destruction of many of those ancient and glorious buildings that have for centuries housed their proud societies along with their libraries and manuscripts and the loss of their gardens, often converted to more utilitarian ends.

But at least the profession has maintained three essentials: its purpose, its freedom and its continuity. It flatters itself that it has reversed the conception of the ancients that "inter arma silent leges" and in so doing has played a perhaps inconspicuous but certainly vital part in the war effort of the free peoples.

Current Events

(Continued from page 424)

unconfined and irresponsible power, whether in private or public hands.

"The last decade of Justice Brandeis' life was saddened. Relapse of whole peoples, under Fascist influence, into a course of torment and plunder deeply offended his sense of justice, as it offends that of all right-thinking men."

Rules on Law List Standards

THE SPECIAL COMMITTEE on Law Lists of the American Bar Association has during the past year carefully reviewed the Committee's records with respect to matters arising under Rules and Standards 3 (b) and 3 (c) and has made an investigation of the practices of the various publishers in order to determine whether any violations of the Rules have existed. As a result of this investigation and the information obtained the Committee has compiled interpretations with respect to both Rules 3 (b) and 3 (c). These interpretations present the opinion of the present committee and also confirm and restate the action of previous committees as reflected by the Committee's records.

A codification of many other past and current rulings and actions of the Committee interpreting the Rules and Standards is in the process of preparation. It is hoped this compilation will be completed before the end of the year and will be available for distribution in printed form.

The Committee believes this codification will be helpful to publishers of law lists and if publicity may be obtained relative thereto in various legal publications that the members of the profession will have a better understanding of the law list problems.

Interpretations

Rule and Standard 3 (b): No certificate of compliance shall be issued to the publisher of any Law List or continue unrevoked which shall be conducted upon a basis which does not tend to promote the public interest, or which employs a practice not in accord with a high standard of business conduct.

1. A violation occurs when any publisher fails to disclose any material fact or makes any statement or does any act which causes a listee or prospective listee to be misled as to any material fact pertaining to the list.

Rule and Standard 3 (c): No certificate of compliance shall be issued to the publisher of any Law List or continue unrevoked if the price for representation, or listing therein, is not uniform within reasonably prescribed areas.

1. "Price for representation or listing" means the charge made for a copy of a law list or the charge made for a listing therein.

2. A "reasonably prescribed area" consists of a city, town or village, including the contiguous territory using its post office address.

3. The "price for representation or listing" in a law list or for a copy of the list is uniform within a reasonably prescribed area when a consistently standard charge is made to each listee in such area for any of the following:

(1) Listing.
(2) A copy of the list.
(3) Space in excess of free space, provided that any free space must be available in a consistently standard manner to all listees.

4. A violation occurs when any publisher gives without charge to any listee in a prescribed area any listing space or a copy of the list unless all listees in such area are accorded an equal opportunity for similar treatment.

5. No violation occurs when a publisher sells his list to less than all of the listees for a prescribed area if the list is available to all such listees at the same price, and if listing is not contingent on the purchase of the list and if all copies of lists distributed to listees in such area are paid for at a uniform rate.

6. It is a violation for any publisher by any means to rebate or cancel any part of the charge to a listee for a law list or listing therein unless a similar adjustment is made to all listees in the same prescribed area.

Rutherford B. Hayes

(Continued from page 436)

Senator Morton declared in Congress, "There are no analogies for it in our Constitution or in our laws or in our history." By this means, however, the controversy was peacefully resolved, albeit not to the satisfaction of everybody in the land. Hayes eschewed any public discussion of the decision and, whatever the real merits of the matter may be, he never entertained any doubt in his own mind as to the legality or the fairness of the final result.

At the end of his term he adhered to the inflexible determination expressed during the campaign not to seek reelection, and retired to private life. His record had been a notable one. He did much to abate the sectional and race bitterness which the war and the blunders of reconstruction had engendered. He reduced the financial chaos to order. He relieved the acute unemployment. He added impetus to the movement for reform in the civil service. And, be it added, all these things and more he accomplished, as he said, "by measures and a policy which were strenuously opposed in whole or in part by most of the powerful leaders of both political parties."

The thirteen years still vouchsafed him were spent on his estate "Spiegal Grove" near Fremont. His days were preoccupied with useful and benevolent activities, including the presidency of the National Prison Association. He watched social tendencies and political developments with keen interest. Toward the end he passed this verdict on conditions. "The burning question of our time in all civilized countries is the question of wealth and poverty, of capital and labor. Small progress has yet been made toward its solution." Alas, a half century later the problem remains unsolved!

After a brief illness, on the night of January 17, 1893, in the words of a newspaper correspondent, "the faithful heart that had beaten high in battle grew faint and failed, and then the white stars watched until morning."

BAR ASSOCIATION NEWS

Bar Association of Arkansas

THE Bar Association of Arkansas held its 46th annual meeting at Hot Springs, on May 7 and 8. Although approximately twenty per cent of the membership of the association is serving in the armed forces, attendance was nearly normal.

JOE C. BARRETT
President, Bar Association of Arkansas

The afternoon session for the entire association convened with Edward B. Downie of Little Rock, chairman of the executive committee, presiding and a scholarly address by President E. H. Wootton of Hot Springs was heard on "The Soldiers' and Sailors' Civil Relief Act." John F. Rhodes of Kansas City, Missouri, a member of the American Bar Association Committee on War Work, then gave an interesting talk on "The Lawyers' Part in War Work." Philip J. Wickser of Buffalo, New York, Chairman of the Civilian Defense Committee of the American Bar Association, also addressed the meeting on the work of his committee and other war work committees of the American Bar Association. These addresses were followed by an interesting report of our own Committee on War Work activity during the past year.

After hearing other committee reports the election of officers was held and Joe C. Barrett of Jonesboro was elected president, E. A. Henry of Little Rock, vice president, and Terrell Marshall was reelected secretary-treasurer.

At the annual banquet held May 7 an intensely humorous talk was made by Harry E. Meek of Little Rock on "Land of the Free and the Brave and the OPA." The Hon. John H. Flanigan of Carthage, Missouri, then addressed the members on "Stare Decisis." This learned address is one which will never be forgotten.

At the final morning session on Saturday, May 8, the Bench and Bar of Texas were ably represented by Chief Justice James P. Alexander of the Supreme Court of Texas whose talk on "Improving the Judiciary" will be of permanent interest and value to the profession in this state. At its conclusion remaining committee reports and resolutions were heard and acted upon and the association then adjourned.

Bar Association of the District of Columbia

THE officers of the Bar Association of the District of Columbia, elected June 9, are: Milton W. King, president; Edmund D. Campbell, first vice president; W. Cameron Burton, second vice president; Wilbur L. Gray, secretary, and Lowry N. Coe, treasurer.

Directors elected for a two-year term are: Ralph A. Cusick, Spencer Gordon and Daniel W. O'Donoghue, Jr. Hugh H. Obear, Joseph A. Rafferty and Henry P. Thomas will complete their terms as directors this year, and the Junior Bar Section will shortly elect one of their number to complete the board.

MILTON W. KING
President, Bar Association of the District of Columbia

Minnesota State Bar Association

THE 43rd annual meeting of the Minnesota State Bar Association was held June 24-25 at Minneapolis.

Honorable Wiley B. Rutledge, Associate Justice of the Supreme Court of the United States, was the principal speaker at the annual banquet June 24. Federal judges of the 8th Circuit were the guests of honor.

Principal speakers on other occasions included Congressman Warren G. Magnuson, Seattle, member of the House Naval Affairs Committee and

W. W. GIBSON
President, Minnesota State Bar Association

a lieutenant commander in the navy, and President George Maurice Morris, of the American Bar Association. President James A. Garrity delivered the annual presidential address.

On June 25, two institutes were held: one on "Title Standards," led by Carroll G. Patton, Minneapolis, assisted by John B. Burke, St. Paul, and Ralph H. Comaford, Minneapolis; the other on "Proposed Plan for Reorganization of the Judicial System of Minnesota," Judge Charles Loring presiding, with M. J. Doherty and Judge John B. Sanborn, both of St. Paul, A. R. English, of Tracy, and S. B. Wennerberg, of Center City, acting as speakers.

W. W. Gibson, Minneapolis, was elected president of the association for the ensuing year.

Mississippi State Bar

THE annual meeting of the Mississippi State Bar was held in Meridian, on June 2, 3 and 4.

President Chas. F. Engle of Natchez, in the president's annual address, reported a year of intense activity, especially with reference to the work done by the Commissioners about the delinquent members of the bar.

Branding racketeers and profiteers who take advantage of the necessities of the government to exact higher compensation or stop work in war factories as "enemies of the government," the Misssissippi State Bar called on the President and Congress to lay aside politics and to concentrate the forces of the Nation to winning the war.

Sponsored by B. B. Allen of Indianola, former state commander of the American Legion, the resolution pointed to the home and war fronts in declaring that "no one on the home front has any more right to stop or impede work than the soldier has to lay down his gun before the enemy. We on the home front must assure our fighting men of full dedication, not only of manpower, but of our resources, until the Victory is won.

"No one has a right to remake America during battles," states the resolution, and Mr. Allen further declared: "Our soldiers are fighting for the American way of life and they have a right to demand that they be permitted to return to an American way of life that they have fought for. They have a right to demand that whatever changes this country makes in the future must come about through constitutional process and by the vote of all the people, including our men now fighting on the far-flung battlefields of the world.

"Racketeers and profiteers, whether employer or employee, must be curbed at once," the resolution added, "and everyone, including the government must have one objective —winning the war."

On Thursday, June 3, the members present were privileged to hear two outstanding speakers. Honorable James Alexander, chief justice of the Supreme Court of Texas, who spoke on "Improving Our Judicial System." He was followed by Judge Archibald T. Higgins of the Supreme Court of Louisiana, who spoke on "United for Victory."

Other speakers at this meeting were Ellis B. Cooper of Laurel who spoke on "Historic Rights Endangered," and Colonel Stanley F. Brewster of the Judge Advocate General's staff at Camp Shelby, Mississippi, who brought a message on the legal problems presented at the camps.

Officers elected for the year 1943-1944 were as follows: President, Ross R. Barnett, Jackson; first vice president, Bidwell Adam, Gulfport; second vice president, George Payne Cossar, Charleston.

ROSS R. BARNETT
President, Mississippi State Bar

New Hampshire Bar Association

THE annual meeting of the New Hampshire Bar Association was held at Nashua on June 26. There was a large attendance considering the limitations of war. From the Junior Bar Conference of the American Bar Association came Chairman Joseph D. Calhoun and Vice Chairman James P. Economos. The former was an after-dinner speaker, and the latter held a luncheon conference on traffic court problems with State Chairman Charles W. Tobey, Jr., enforcement officers and municipal judges.

An institute was conducted by Professor Harold M. Bowman of Boston University Law School on "Recent Decisions in the Field of Constitutional Law." Topics discussed included the validity of license requirements as applied to Jehovah's Witnesses, the flag salute regulations, the commerce power and the Fair Labor Standards Act, and the full faith and credit clause. All the topics were covered with clearness and with sufficient detail to be useful.

The address of President Burt R. Cooper was devoted to consideration of the proposal for a court of family relations.

At the banquet there was appropriate observance of the seventieth birthday of Chief Justice John E. Allen of the Supreme Court of New Hampshire who retired, because of constitutional limitation of office, on the day of the meeting. Grenville Clark of New York was the principal speaker. A memento with birthday verses by Frederick W. Branch, autographed by all the lawyers present, was presented by the author who also read several of his other poems. Judge Allen responded and closed with a fitting statement of his legal and constitutional philosophy.

Officers elected for the ensuing year are: Judge Elwin L. Page, Concord, president; Philip H. Faulkner, Keene, vice president; secretary-treasurer, Willoughby A. Colby, Concord; delegate to the American Bar Association, Robert W. Upton, Concord; executive committee, Harry W. Peyser, Portsmouth, John F. Beamis, Jr., Somersworth, Preston B. Smart, Ossipee, Robert V. Johnson, Laconia, Maurice F. Devine, Manchester, Peter J. King, Concord, Walker S. Kimball, Keene, Kenneth D. Andler, Newport, Norris Cotton, Lebanon, and Irving A. Hinkley, Lancaster.

DENIS M. KELLEHER
President, Iowa State Bar Association

Massachusetts Bar Association

OVER two hundred members of the bar attended the Second Annual Massachusetts Lawyers' Institute at Swampscott on June 11 and 12, sponsored by the Massachusetts Bar Association.

On Friday afternoon addresses were made by Judge Jacob J. Kaplan, James H. Powers, of the Boston *Globe*, and Edmund Stevens, *Christian Science Monitor* correspondent.

Saturday morning was devoted to a tax symposium in which Allan H. W. Higgins, Harold T. Davis, Bradley B. Gilman, of the Massachusetts Bar, Professor Erwin N. Griswold of Harvard Law School, and Thomas B. Hassett, Collector of Internal Revenue, took part. The session was concluded by a report from Arthur W. Blakemore of the Boston Bar on the "Model Youth Correction Authority Act."

Following luncheon, the Thirty-Second Annual Meeting of the Massachusetts Bar Association was held, at which President Mayo A. Shattuck presided. Officers elected for the following year are: President, Mayo A. Shattuck, Hingham; treasurer, Horace E. Allen, Springfield; and secretary, Frank W. Grinnell, Boston.

Following the meeting, Roscoe Pound, dean emeritus of Harvard Law School, spoke on "Progress and Status of American Legal Education." The meeting was concluded by a dinner.

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The American Bar Association Journal takes pleasure in offering to its readers a new and revised edition of

Law Office Organization

by

Reginald Heber Smith

This attractive pamphlet describes a system of law office organization, which, Mr. Smith says, "has been in actual operation for twenty years and has worked reasonably well." He lists the following benefits: "(1) The elimination of waste has saved thousands of dollars, and a dollar saved is a dollar of added income. (2) The attorneys have been able to produce the best work of which they were inherently capable. (3) Morale and esprit de corps have been kept at a high pitch because the men believe the rules of the system are fair; indeed they have made the rules themselves. (4) That nightmare of partnerships—how to divide the profits justly among the partners—has been dispelled. That problem has always tended to be a disruptive force in partnership life; but no partner has ever left us to join any other firm. (5) Cost Control has enabled us to handle at a moderate profit a great many small cases which otherwise we should have handled at a loss or perhaps not at all. (6) We have been enabled to grow from a small group of men to a somewhat larger group."

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That's why the Treasury Department now urges you to revise your War Bond *thinking*—and your War Bond *selling*—on the basis of *family* incomes. The current War Bond campaign is built around the family unit—and labor-management sales programs should be revised accordingly.

For details get in touch with your local War Savings Staff which will supply you with all necessary material for the proper presentation of the new plan.

Last year's bonds got us started—*this year's bonds are to win!* So let's all raise our sights, and get going. If we all pull together, we'll put it over with a bang!

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